

The complaint

Mr O is unhappy that Santander UK Plc have loaded a Cifas (credit industry fraud avoidance scheme) marker against him and closed his account.

What happened

Mr O had two current accounts with Santander. In October and November 2023 Mr O received a number of credits to his accounts equalling £970 from two different accounts. After receiving confirmation from a third party bank that these funds had originated from fraud, Santander asked Mr O for more information about the credits to the account.

According to its records Mr O provided more than one version of why the money had been sent to him and who from. Following its investigation, on 17 November 2023 Santander wrote to Mr O to confirm it was closing his account giving 30 days notice.

On 27 November 2023 Mr O provided further documentation to Santander to try and evidence his entitlement to the funds. Santander reviewed this but didn't feel this evidence was sufficient. It proceeded with the closure of the accounts and loaded a Cifas marker against him.

Mr O made a complaint to Santander about the Cifas marker and its decision to close his account. He said this was causing him significant issues when trying to open another account. Santander responded to his complaint in January 2024 but said it felt the Cifas marker and decision to close the account had been fair in this case.

Mr O brought the complaint to our service to consider. Our investigator didn't uphold the complaint. They didn't feel Mr O had been able to provide sufficient evidence he was entitled to the funds in question and overall didn't think Santander had acted unfairly in closing his account or loading a Cifas marker against him. Mr O didn't accept the investigator's findings so the complaint has been passed to me to make a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr O says Santander shouldn't have recorded a marker against his name. He's said he provided evidence to Santander that the money received into his account was owed to him and Santander had treated him unfairly in loading a Cifas marker, which has made it difficult for him to open another bank account.

The marker that Santander filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr O is guilty of fraud or a financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas says:

- “There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.
- In order to file the member must have rejected, withdrawn or terminated a Product on the basis of Fraud”

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr O’s account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. There’s also a requirement that Santander should be giving the account holder an opportunity to explain what was going on.

Here Mr O received funds into his account that were confirmed by a third party bank to have originated from fraud. The bank reported the funds as ‘second generation’, meaning that the funds didn’t enter Mr O’s account directly, from their source, but were transferred to Mr O’s account from someone who did receive the funds from the victim – in this case, someone Mr O has said was an old friend.

Transferring funds to numerous accounts following the initial fraud is commonly referred to as money laundering. There are times where unsuspecting victims are used to transfer funds through their account or receive money unknowingly from fraud for goods and services provided. This is common in second generation recipients and therefore presents a challenge when associating the activity to the original act.

It appears Mr O has provided more than one version of how the money came to him. According to Santander’s records Mr O told it that:

- His friend owed him the money and was repaying it
- His friend was sending the money to him to make a purchase on his behalf, but didn’t have enough to make the purchase directly himself
- That some of the money might’ve come from Mr O’s own account with another bank

Mr O has told our service that:

- His friend sent him the money to withdraw in cash and couldn’t do it himself because he’d reached his cash withdrawal limit for the day
- That he had kept 10% of the money himself because he was doing his friend a favour by withdrawing the cash for him
- That he didn’t realise the money had come from two different senders until after Santander’s investigation had started

It’s not clear why there are so many discrepancies in Mr O’s version of events around how he came to be in possession of the funds. When we’ve asked Mr O about this he’s said he doesn’t recall telling Santander anything about the funds he received into the account. And where there is a dispute around what has happened, I have to consider the available evidence and decide what I think is most likely given the circumstances.

Santander has kept written summaries of the calls that have taken place between it and Mr O. And it's within these records it's recorded the different versions of why Mr O has said his friend sent him the money that forms part of the dispute. And whilst Mr O is saying he doesn't remember giving Santander these explanations, it's not clear to me why different members of staff, on different dates would've recorded these different versions of events. It doesn't seem likely to me that they would've made a record of this without any input from Mr O.

But, even if Mr O had given a consistent version of events throughout I still wouldn't conclude Santander has treated him unfairly. I say this because overall, I don't think Mr O has been able to provide sufficient evidence to explain why the money was transferred to him or that he was entitled to it.

Mr O has been asked by Santander, and our service, on multiple occasions, to provide evidence of where these funds came from and why they were sent to him. I can see we have provided detailed explanations of what we would need to see and what sort of information he could provide to us. Overall I don't think what Mr O has sent is sufficient because:

- Mr O hasn't been able to provide any evidence to support that this money came from someone he had a relationship with, what the relationship was or why it came from two different accounts and seemingly two different people if he believed he was dealing with one friend.
- He hasn't been able to demonstrate that there were any discussions between him and his friend about the money or why the money was being sent.
- Based on the story Mr O told our service – that his friend needed cash but had reached their withdrawal limit – he hasn't explained why the person wanted the money in cash or why he kept 10% of it, which seems odd given he's said he was simply making a withdrawal for someone.
- He hasn't explained why the money was sent across two different days, several days apart. Which seems odd given he's said his friend needed to make a cash withdrawal because he'd reached his limit and cash withdrawal limits generally reset each day.

Mr O says he thinks he's sent us sufficient evidence in this case because he's sent several screenshots showing the money was sent to his account - which isn't in dispute - and that the money was withdrawn in cash - which again isn't in dispute. The evidence he's provided doesn't tell us anything about his relationship with the people who sent the money, why they sent it or what Mr O knew about where it came from. And as I've said, I'm satisfied we've given Mr O sufficient opportunity to provide this evidence to us.

Mr O has said he no longer has a relationship with the friend who sent the money, so he can't provide any evidence relating to their historic communication beyond a single screenshot of a message he found part way through our investigation. There is nothing in this screenshot that shows who the message is from, the date it was sent and doesn't include any of the conversation leading up to this message or responding to it. The message states: *"Can I send money to ur account it's legit just need u to cash it out because the withdrawal limit in my bank is low"*.

Given the lack of detail in this message I don't think it does provide evidence to support what Mr O has said. I think it also seems unusual that his friend would clarify the situation was 'legit' unprompted and equally unusual that Mr O didn't question this. It's also not clear to me why Mr O only kept a record of this single message. If he was concerned enough to keep a

record of this part of the conversation, it's not clear why he wouldn't keep the rest of it or in fact question what he was being told.

The requirements around banks lodging markers at Cifas include there being sufficient evidence that the customer was aware and involved in what was going on. Santander has provided evidence that Mr O has received funds into his account that have originated from fraud. He has been unable to provide any corroborative evidence to support his testimony that he is an innocent party of the transfer of the funds and was unaware of their origins.

Having looked at all the evidence I'm satisfied this shows there were reasonable grounds to suspect that fraud had been committed. And from the evidence I've seen that Mr O was likely complicit in this. On this basis I don't think it would be fair or reasonable to ask Santander to remove the marker or pay Mr O compensation.

Mr O is also unhappy that Santander has closed his account. The terms and conditions of the account set out that Santander is able to close his account without notice if they reasonably believe the account has been used to facilitate economic crimes such as money laundering and fraud. I'm satisfied Santander had reasonable suspicions Mr O was involved in this type of activity in this case so I'm satisfied it's decision to close the account was fair.

I would also add that in order to fairly load a Cifas marker Santander needs to have withdrawn or terminated a product on the basis of fraud. As I'm satisfied Santander has made a reasonable decision in loading the Cifas marker against Mr O it follows it has acted reasonably in closing his account.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 October 2024.

Faye Brownhill
Ombudsman