

The complaint

Mr S complains Santander UK Plc (“Santander”) unfairly applied an adverse fraud marker against him in 2022.

What happened

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

Santander received a fraud report about a payment Mr S had received in 2022. Santander say it attempted to get in touch with Mr S and investigate his entitlement to the funds. As it didn’t hear from Mr S, Santander decided to close his account in October 2022. Mr S complained about this at the time, but Santander didn’t uphold his complaint.

In its final response of November 2022 in relation to a separate complaint about the account closures, Santander made the following key points:

- Santander placed restrictions on Mr S’ account when it had concerns about a payment it received of £75 being made in September 2022. Santander issued Mr S with a letter on 11 October 2022 asking him to contact it. Santander also attempted to contact Mr S on 13 and 18 October 2022 but were unsuccessful.
- Santander is sorry to hear from Mr S that when he attempted to call it, it was experiencing high call volumes. Santander requested Mr S to contact it on the enclosed telephone number, and to provide evidence to support the payment he received of £75.

Mr S says he came back from holiday at the end of October 2022 to a voicemail from Santander saying there was an issue with a transaction. And that he made numerous return calls but at the time got left on hold for up to an hour. And when he finally spoke to an adviser, they put him on hold for over 35 minutes before he was cut off. At this point he wrote a letter to Santander and visited his local branch, but they advised they were unable to help.

Mr S says he later found out in 2024 that Santander had applied a CIFAS (Credit Industry Fraud Avoidance System) marker against him. Mr S complained about this to Santander. Santander upheld Mr S’ complaint in part. In summary, the key points it made were:

- Santander can’t remove the marker.
- The length of time Mr S had to wait on the telephone isn’t indicative of the service Santander would like to provide. Santander accepts its standards have fallen below that which it expects on this occasion. As a gesture of goodwill, it would like to pay Mr S £30, but to comply with its legal obligations it needs him to provide his date of birth and nationality.

Mr S referred his complaint to this service. Our Investigator’s looked into Mr S’ complaint,

and one of them recommended the complaint wasn't upheld. In short, they made the following key findings:

- The CIFAS marker was recorded in connection with the £75 payment Mr S received in September 2022. Santander has provided evidence that it attempted to call Mr S by phone and letter to discuss the payment - but didn't receive a response. So, it carried out its review based on the information it did have and applied the marker.
- In its final response of November 2022, Santander asked Mr S to provide evidence about the £75 payment. It doesn't appear he did.
- If Mr S can show his entitlement to the £75 payment, Santander's application of the marker can be reviewed again.

Mr S didn't agree with what our Investigator said. He says he accepted the £30 compensation by letter and Santander already has his date of birth and nationality details. He reasserted that he had no record of receiving anything from Santander other than the phone calls. And it is Santander who communicated poorly and didn't respond to his letters.

Mr S also said that with the passage of time, and limited information, it's difficult to trace the payment and which online platform the trade that underpinned it was made from. Mr S also asked to see a copy of the letter Santander said it sent him. Santander said it would now only pay the £30 compensation once this complaint has been decided by an ombudsman.

As there was no agreement, this complaint has been passed to me to decide.

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.

Having done so, I have decided not to uphold this complaint. I'll explain why.

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

CIFAS says:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.
- That the evidence must be clear, relevant, and rigorous.

What this means in practice is that a financial business must first be able to show fraudulent funds have entered Mr S' account, whether they are retained or pass through the account. Having looked at the information Santander has given me; I'm satisfied fraudulent funds entered Mr S' account.

Secondly, Santander will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment. A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider

whether Santander has enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

I can see Santander made reasonable attempts to contact Mr S and that it sent him a letter whereby the address on it matches with the postcode we have at this service for him. I haven't seen any evidence Mr S provided sufficient evidence to Santander to prove he was legitimately entitled to that payment.

Our Investigators have also attempted to get this information, but Mr S says its now impractical for him to do so without more information. Mr S should note that the payment was made into his account by a private individual using Faster Payments. But what information Mr S has provided to this service doesn't show he was acting in good faith and had provided the goods for which the payment related to.

I note Mr S would like to see a copy of this letter Santander sent, and I see no reason not to send it to him. But I think it makes little or no difference to the outcome of this complaint as things stand. I say that because, he knew from the final response letter Santander sent him in November 2022 that it required this evidence and was directed to call a bespoke telephone number. Mr S says he accepted the offer of compensation made in that letter, so I'm satisfied he had received it.

It's worth noting too that this final response letter was sent around two months after the payment of £75 was paid into Mr S' account. So, any records about it should have been accessible at that point given the proximity to when it was made. Nor would the volume of transactions argument that Mr S makes have had little bearing at that time.

Santander offered to Pay Mr S £30 as a goodwill payment for the inconvenience he says he suffered for large call wait times and being cut off. Santander's internal records show it couldn't trace any evidence of this happening, but it was happy when investigating his complaint to take Mr S' word that it did. I don't think Santander needs to do anymore.

So, after weighing everything up, I won't be directing Santander to remove the CIFAS marker it applied against Mr S. If Mr S can provide new evidence of his entitlement to the payment, and in particular the relevant products were delivered, Santander should review its position.

My final decision

For the reasons above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 April 2025.

Ketan Nagla
Ombudsman