

## **complaint**

Mr A complains that Santander UK Plc is holding him responsible for disputed withdrawals from his account and has registered a fraud marker on CIFAS the national fraud database.

## **background**

Mr A opened an account with Santander on 30 June 2016. On 18 August 2016 credits of £14,000 were transferred to his account. And two cash withdrawals made that day for £4,700 in a branch and for £3,587.12 at a travel money exchange business. The money paid in was reported as fraudulent and was taken back from the account leaving an overdraft. Santander closed the account and appointed debt collectors. And it reported that Mr A had been in receipt of fraudulently obtained funds to CIFAS. Mr A says he didn't make the withdrawals and wants the debt and the marker removed as it is stopping him opening another account. Santander said it wouldn't do so.

Our adjudicator didn't recommend that the complaint be upheld. He said that:

- Mr A said he had opened the account because he was looking for a job and that his father sometimes sent him money. But that he didn't know how this money came to be credited to his account.
- Mr A had told him that he kept his card and PIN in the top drawer of his cabinet and that he never let anyone else use his card. He said that post to his home had sometimes gone missing but he received both these items.
- Mr A also said he only found out about this fraud when he was contacted by a debt collector in December 2016 as his address had been incorrectly changed. He got in touch with Santander but didn't appeal its decision until August 2017.
- The withdrawals were made when the chip on the genuine card was read and the correct PIN entered. The details for the branch withdrawal recorded that Mr A's passport had been provided.
- As Mr A told him he had the card and PIN at home he couldn't see how a third party could have obtained both of these to make the withdrawals. And he didn't think that the family members he lived with (his mother and sister) could have impersonated him.
- He concluded that Mr A had authorised the withdrawals. As the money credited to the account wasn't his and was obtained fraudulently Santander hadn't made an error in reporting what happened to CIFAS.
- Mr A in response to the first opinion had then said that he had lost the card. Our adjudicator replied that he was surprised that Mr A hadn't mentioned this before. But even if he had lost it that didn't explain how someone could have obtained the card and then also found out the PIN and been able to produce his passport in a branch.

Mr A didn't agree and wanted his complaint to be reviewed by an ombudsman. He said that his address with Santander had been changed to somewhere he never lived without him knowing. And only his PIN was in his top drawer, not his card. He had lost this but because he didn't use the account he forgot about it and didn't cancel it. He remained unhappy that Santander can't provide a copy of the passport used in the branch as identification and that we're relying on someone else's word. He maintained that he didn't carry out these transactions and that he shouldn't be responsible for the debt in his name.

## **my findings**

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

I need to take account of the Payment Services Regulations 2009. And to think about whether Mr A authorised the payments from his account. That's more than the payments being authenticated but would require him to consent to them. If he didn't authorise them then generally Santander wouldn't be able to hold him responsible for them.

I also need to consider whether the report to CIFAS was made fairly. On this point, Santander needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

### *the withdrawals*

Based on the available evidence I'm satisfied that the payments from the account were authenticated. The chip on the genuine card was read and the correct PIN entered. I know Mr A disputes that his passport details were seen in branch but I can see a record made by Santander at the time of the withdrawal to say they were. I wouldn't have expected it to have made a copy but I see no reason why it wouldn't have requested and checked this second form of identification in line with its requirements.

The issue is whether Mr A consented to these payments. There are a couple of areas where he's been recorded as giving inconsistent evidence about what happened. During the fraud investigation Santander noted that he told it that the money was from his father. He now says he doesn't know where the money came from. And as our adjudicator's said he told this service (on a written form I've seen) that he had the card and PIN in his top drawer. Like the adjudicator I'm struggling to see how he could have made a mistake about that because the loss of his card was an important detail of his complaint.

I note from Santander's records that the card and PIN used for these withdrawals was sent to his correct address. His card was expected to have reached him by 8 August 2016. Santander also records his address being changed. That new address is where it sent the letter about the fraud and the outstanding overdrawn balance on 6 September 2016. Although Mr A says he did move at the end of August 2016 he says he never lived at the address Santander then had. But I can't see why a fraudster would have changed the address. And it doesn't have any bearing that I can see on who was responsible for the payments made in August 2016. It clearly delayed Santander being able to get in touch with Mr A about repaying this debt.

I don't think Mr A is suggesting that it was a family member that carried out the payments having somehow arranged for the money to be credited to his account. And I agree that this is unlikely. His view is that an unknown third party carried all this out. To find that I'd need to think the following were all most likely:

- That person was able to obtain his card (either when Mr A says he lost it) or as he originally said from his top drawer.
- That person was also able to obtain the PIN which Mr A says was kept in the top drawer.
- Significant funds were transferred into his account and then quickly withdrawn using the card and PIN. The third party was bold enough to go to a branch to take out

money and was able successfully to impersonate Mr A – and with his passport details based on Santander’s account which I find credible..

- That person for some reason decided to change the address Santander had recorded for Mr A after the fraud had taken place.

I’m afraid that these aren’t all findings I’m able to make on the evidence. And in reaching that view I’ve taken into account the inconsistency in what Mr A has said to this service.

So I find that the most likely explanation is that he consented to these withdrawals and they were authorised. He’s not provided any evidence to show he was entitled to this money and he now says he knew nothing about the source of it. Santander has shown that this money was reported as fraudulently obtained.

#### *the CIFAS marker*

Santander says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So I’ve looked at whether Santander was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Santander needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A’s account of events and the evidence Santander has provided, I’m satisfied that Santander had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I’ve taken into account the following reasons:

- Mr A received fraudulent funds into his account
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Santander had grounds to believe that Mr A had used fraudulently obtained funds based on the evidence it had.

In light of my findings I don’t have a basis to require Santander to take any further action. I consider that Mr A is fairly responsible for this debt and so he’ll need to discuss his plans for repayment with Santander.

#### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 3 January 2020.

Michael Crewe  
**ombudsman**