

Complaint

Mr F has complained that Santander UK Plc registered a CIFAS marker against his name.

Background

Santander closed Mr F's account and registered a CIFAS marker after someone had deposited two cheques in his account for £39,310 and £32,000. The first cheque was returned marked 'unpaid' and the second was returned as 'suspected fraud or counterfeit cheque'. Mr F's debit card and PIN were used to make the deposits.

The relevant transactions and activities are shown in the table below.

Date	Time	Activity	Verification
21 November 2018	21:45 21:46 22:22	ATM	Incorrect PIN Incorrect PIN Correct PIN
21 November 2018	22:23	ATM deposit – cheque for £39, 310	Chip and PIN
22 November 2018		Log on to online banking	
23 November 2018		Cheque returned unpaid	
23 to 29 November 2018		Log on to online banking	
30 November 2018	16:09 18:16 18:59 20.07 22.24	ATM deposit – cheque for £32,000 Log on to online banking ATM balance inquiry Log on to online banking	Chip and PIN Chip and PIN
3 December 2018		Second cheque returned marked suspected fraud or counterfeit	

Santander blocked his account and made inquiries. It subsequently closed his account.

Mr F's response

Santander asked Mr F about the cheques. He said he knew nothing about them. He said he was at work when the cheques were paid in.

Mr F also confirmed that his debit card was with him when he was at work. He said he hadn't lost his card and it hadn't gone missing. He said no one else knew his PIN or banking details and he doesn't keep a written note of these details.

He said he lives alone.

Santander's response

Santander concluded that Mr F knew about the cheques, after completing its inquiries. It said:

- his card and PIN were used to deposit the cheques
- his card and PIN were used at the same ATM, before the first cheque was deposited. This means whoever deposited the cheques also had his card and knew his PIN
- he'd logged on to online banking and was monitoring the account after the cheques were deposited

In addition, the first cheque was made payable to him using the initial of his first name and his full surname. When this was returned, a second attempt was made with a cheque written out in his full name, including his middle name. The names are unusual. Santander didn't think it was likely that an unknown third party would know or guess his full name.

It decided he'd misused his account by depositing the cheques himself, or if not him, by allowing someone else to use his account for fraudulent purposes. For this reason, it closed his account and registered a CIFAS marker.

Investigator's view

Mr F wasn't happy with Santander's decision and so he brought his complaint to this service.

He doesn't think Santander has properly investigated his complaint. He's told us the cheques don't match his handwriting or his signature. He said the names on the cheque are wrong. And he said CCTV footage would show it wasn't he who deposited the cheques but Santander didn't get the footage.

The investigator looked into his complaint but decided not to uphold it. He considered that the evidence linking Mr F with the cheques, namely his card and PIN, strongly suggested he knew about them. And he thought it was unlikely that an unknown third party had stolen the card and used it because Mr F maintained that no-one else knew his PIN and that he had his card with him at all times.

Also, there was evidence that he'd logged in to his online banking and so he would have seen the cheques when they were paid in. Yet, he didn't report them.

Mr F didn't accept the investigator's view. He has asked for an ombudsman's final decision. He maintains that Santander's investigation was inadequate and that it should have checked the handwriting on the cheque and CCTV footage.

My findings

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've decided not to uphold the complaint, for broadly the same reasons as the investigator.

The bar for recording a CIFAS marker is a high one. The bank must have a good reason to believe it could have suffered a loss and/or it reasonably believes it has grounds to press criminal charges as a result of the activity on the account. This should be more than just a suspicion or concern.

It follows that the bank must have carried out sufficient checks to satisfy this requirement. Given the impact a CIFAS marker can have on someone, the bank is expected to keep a record of these checks so it can evidence the decision it reached to record the CIFAS marker.

Having reviewed the evidence, I am satisfied that Santander met the test for recording a CIFAS marker and that it carried out sufficient checks. And despite what Mr F has said, I'm not persuaded he didn't know about the cheques. In coming to that view, I've taken into account the following evidence.

Debit card and PIN

Mr F's debit card and PIN were used to deposit the cheques at ATMs.

I've noted that the ATMs were in different parts of the country and that there were two incorrect PIN entries, before the first cheque was deposited. I think this makes it less likely that Mr F was the person who paid in the cheque, as he would have known his PIN. However, it also seems from the statements that he seldom used his card for this account.

I've thought about whether someone took his card and replaced it. However, Mr F has been adamant that he had his card with him at all times. But even if someone close to him removed his card and replaced it without him noticing, that still doesn't explain how they knew the PIN. And Mr F has consistently said he didn't share his PIN with anyone or keep a written note of it.

Santander also points out that, had the cheques cleared, an unknown third party couldn't withdraw or transfer the money without the card and PIN or access to his online banking. Again, he's confirmed that he hasn't shared his online banking log on details with anyone else.

So despite, the incorrect PIN entries, I consider it's more likely than not that he knew about the cheques and either paid them in himself or allowed someone else to do so.

Online activity

Santander's online audit trail shows that Mr F logged on to his online account after the cheques were deposited. It said the cheques would not have shown on his available balance but would have shown on his current balance of the account. However, Mr F did not report the cheques at the time, despite there being a considerable space of time between the two cheque deposits. I think he would have seen those cheques especially as they were for large amounts.

Name on cheques

I've looked at the two cheques. The second one spells out Mr F's forenames and surname in full. The names match his names on his driving licence. Admittedly, there is an error. The middle name has an incorrect letter.

But his forenames are not common. I think it's very unlikely someone who didn't know him would randomly guess his name.

Of course, it's easy to find out a person's name. A stranger could easily find out this information. Equally, someone who knows him might use his name on the cheque. I've considered that the handwriting and signature don't match his writing and signature, but this makes little difference. Someone else might have written out the cheques. But the use of his full name on the second cheque, coupled with the evidence of the debit card and PIN, indicates that he did know about the cheques.

Similarly, his absence on CCTV footage would not exonerate him. The bank's position is that he must have known about the cheques, even if he didn't deposit them himself.

For the sake of completeness, I have also checked Mr F's timesheet from work but I'm afraid I think the information is inconclusive. The sheet doesn't tell me what hours he worked on 21 November or 30 November 2018.

In summary, I consider that Santander carried out sufficient checks, which show it's more likely than not that Mr F knew about the fraudulent cheques, even if he didn't pay them in. In these circumstances, I consider he has misused his account and that Santander was entitled to register the CIFAS marker. I won't be asking it to remove it.

The investigator has explained why Santander closed the account. I agree with his explanation.

My final decision

My final decision is that I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 February 2020.

Razia Karim
ombudsman