

complaint

Mr J complains that the actions of Santander UK Plc (“the bank”) following an incident where he was a victim of identity fraud mean that he can’t now open an account at another bank.

background

Mr J says that he was the victim of identity fraud, and that various transactions were carried out using his bank card that he didn’t authorise.

When the fraud was reported to the bank, the outcome of its investigation was that Mr J had allowed his account to be used by third parties for fraudulent purposes, and was likely to have been paid for doing so. Following this conclusion the bank added CIFAS and SIRA listings for Mr J.

He now complains that as a result of these adverse markers he’s unable to open a bank account elsewhere.

The complaint was brought to this service, where our adjudicator felt that although he was satisfied that Mr J had allowed his account to be used for fraudulent purposes, he wasn’t convinced that Mr J himself had carried out the transactions, and therefore the listings that had been made against him weren’t fair.

He asked the bank to remove the CIFAS and SIRA listings from the open report, which would mean that other lenders couldn’t see them, while still allowing the bank to retain the information internally in the event that Mr J wanted to become a customer some time again in the future.

The bank didn’t agree to remove the listings on the basis that it was confident that Mr J was complicit in the fraudulent transactions by allowing his account to be used in the first place.

In the absence of agreement, the case was referred to an ombudsman.

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’m satisfied that our adjudicator was correct in upholding the complaint in part, and asking the bank to remove the CIFAS and SIRA markers from the open record.

I’m also in agreement with his reasons for doing so, namely that the test that must be passed before such listings can be made is that there is actual evidence, and not just suspicion. And this is the case no matter how strong the suspicion is.

I can understand why the bank feels the way it does, and that it has a duty to protect itself and other lenders, but I have to consider what’s fair to both parties, and I simply don’t think the bank’s evidence goes far enough to make the listings legitimate. It must have sufficient evidence to support the allegation of suspected fraud, and I’m not convinced that it does.

For example, the bank's position is that the fact that Mr J paid an initial £130 into the account himself made him clearly complicit in the ongoing fraud, but our adjudicator didn't agree. He felt that this money could just as easily have been the payment the fraudsters made to Mr J for the use of his account, and doesn't tell us anything more about his subsequent involvement with payments in and out of the account.

Ultimately, as I don't think there's enough evidence to justify the listings, I think our adjudicator's proposal that the markers be removed only from the open record, but retained in the bank's own internal records, is a practical and fair way of dealing with this issue.

For these reasons I partly uphold the complaint, and now require the bank to remove the CIFAS and SIRA markers from the open record.

I don't require any compensation to be paid to Mr J as I while I've reached a different conclusion to the bank, I accept that its own position was genuinely held, and that it hasn't acted unreasonably. I also can't ignore the fact that the evidence does suggest that Mr J allowed his account to be used fraudulently in the first place.

my final decision

My final decision is that I uphold the complaint in part, and now require Santander UK Plc to remove the CIFAS and SIRA markers from the open record.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J to accept or reject my decision before 9 April 2015.

Ashley L B More
ombudsman