

The complaint

Mr S has complained that Santander UK Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In 2020, Mr S's Santander accounts received the proceeds of fraud. The money was transferred between Mr S's accounts using his online banking, then was quickly withdrawn in cash and spent at point of sale merchants using his card and PIN.

Mr S first told Santander he'd been away and was the victim of fraud, none of the activity was him, and he didn't know what had happened. He later told Santander he'd been approached on the high street by scary people offering him money to use his account. He'd given them his login details and they'd done all the activity themselves. Santander asked Mr S for evidence of what had happened. Mr S said he'd get this evidence and call back. But he didn't get back in touch or provide the evidence promised. Santander closed Mr S's accounts and registered a marker against him at CIFAS.

In 2023, Mr S came to our service. He now says he was approached by a friend in his place of education at lunch. The friend needed help withdrawing money as their account had issues. Mr S said they desperately needed his help so he willingly helped out of empathy, but they also threatened him so he complied under duress. At first he gave them his card and PIN for withdrawals, then later he gave them access to his online banking. He'd known this person for two years, but was unable to provide any evidence of knowing or contacting them, or the evidence he'd promised Santander, as he'd since changed phone.

Our investigator looked into things independently and didn't uphold the complaint. Mr S asked for an ombudsman's decision, so the complaint's been passed to me to decide.

I sent Mr S and Santander a provisional decision on 30 January 2024, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Santander were not required to prove beyond all reasonable doubt that Mr S had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think Santander did have sufficient grounds to register this marker. I'll explain why.

Santander received an official report from another institution that a victim of fraud had been deceived into paying Mr S. Mr S's card, PIN, and online banking had then been used to spend the fraudulent funds. This was done very quickly, such that the money could not be recovered. Santander spoke to Mr S about this, but he gave conflicting testimony. When asked for evidence, he said he'd get this, but then didn't get back in touch or provide any.

I'm afraid I do need to take into account that Mr S has given very different testimony at different times. This means I cannot reasonably rely on any of his various versions of events.

Mr S has been fairly consistent in saying that he didn't carry out the fraudulent activity himself. According to his various testimonies, his account was used entirely without his knowledge, or by strangers who'd paid him to use his account, or by a friend.

However, the online activity involved was done on a device Mr S had registered some time beforehand, using the same phone number he uses now. And it was done at IP addresses matching the IP addresses Mr S used for his genuine online activity. So the fraudulent funds were moved on using the same internet connections that Mr S usually used for his own banking. I've not found any evidence of any third-party or unauthorised access to Mr S's devices or online banking. And Mr S authorised one of the transfers involved by providing a code which had been sent to his mobile phone number – again, the same number he uses now. So I'm reasonably satisfied that Mr S was directly involved in moving the fraudulent funds.

Further, Mr S initially said a fraudster had used his account without him being aware. But there's no likely or plausible way that a fraudster would've had access to Mr S's phone, internet connection, security details, card, and PIN without his knowledge or consent. Mr S then said that strangers from the street carried out the activity and he only gave them his online login details. But the bulk of the spending was done using his card and PIN. So if the strangers didn't have his card and PIN, that must have been Mr S. Mr S now says he gave a friend his card and PIN, then only gave them his online login details some time later. But the online activity started before the activity on his card and PIN, so that can't be true either. So whichever of Mr S's versions of events I go with, I don't see a likely way that this happened without Mr S's direct involvement.

Similarly, a large amount of the fraudulent funds was withdrawn in branch. While it was too long ago for me to now be able to see what ID was checked, the person withdrawing was able to identify themselves as Mr S.

Mr S was aware at the time that his account had been placed under review due to fraud, he discussed this with Santander, and he was aware he needed to provide evidence of what had happened, such as his contact with the strangers or friend. He said he would provide such evidence, but then chose not to, and now says he's since deleted it. But if Mr S really had evidence of his innocence, it is exceptionally unlikely that he'd withhold it and then delete it while knowing he was in trouble for fraud. Similarly, even after changing phone, given the prevalence of phone-to-phone data transfers, cloud storage, and the like, it's unlikely that Mr S would lose all this evidence. It's also unlikely that he'd have absolutely no evidence in general of contact with a friend who he'd known for years.

So the evidence at hand strongly suggests that Mr S was directly involved in moving on the fraudulent funds. Mr S's testimony has been contradictory, and he's been unable to evidence what he's said even when he should be able to. And there's no evidence which shows or substantiates that Mr S was uninvolved or an unwitting participant in the fraud.

Given the evidence that Mr S was using the account during the fraud, and given the lack of evidence that anyone else was using the account, it also appears that Mr S was the main beneficiary of the fraud. The fraudulent funds went into Mr S's accounts, were transferred at Mr S's usual IP addresses, using a device which Mr S set up using Mr S's phone number; Mr S verified the activity with a code sent to Mr S, and then the fraudulent funds were spent using Mr S's card and PIN, or were withdrawn in branch by someone able to identify themselves as Mr S.

So it seems fair that Santander closed Mr S's accounts and registered a marker against him at CIFAS. This is a difficult message for me to give, and I know it's a difficult message for Mr S to receive. But given the evidence I have so far, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 13 February 2024. Santander didn't add anything further. Mr S expressed that he was disappointed with the outcome, and he asked some general queries, though he didn't otherwise provide any new evidence or arguments.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above. While I do understand that this will come as a disappointment for Mr S, given the evidence I went through above, I can't fairly reach any other conclusion.

I can see that our investigator answered Mr S's queries. But to reiterate, the CIFAS marker is not forever and will expire six years after it was added. As it was added about four years ago, there's only about two years left. Then after that, if Mr S does not involve himself in any similar fraudulent activity, he will be able to avoid getting further markers.

In the meantime, Mr S may wish to speak to the organisations which our investigator gave him the details of, and to try getting a basic bank account for his banking needs.

My final decision

For the reasons set out, I don't 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 12 March 2024.

Adam Charles
Ombudsman