

## Complaint

Mr O is unhappy that Santander UK Plc (“Santander”) closed his account and recorded a fraud prevention marker against him.

## Background

In the period between May 2022 and July 2022, Mr O’s account received a number of transfers totalling £4,990.00. In July 2022, Santander received a notification from the bank which sent the payments stating that the payer of the funds from the transfer had reported being a victim of fraud.

As a result of this, Santander reviewed Mr O’s account, decided to close it and also record a fraud prevention marker against Mr O. Upon subsequently learning of the fraud marker, Mr O complained. Santander looked at Mr O’s complaint and didn’t uphold it. As Mr O remained dissatisfied he referred the matter to our service.

One of our adjudicators looked into Mr O’s concerns. She didn’t think that Santander had done anything wrong or treated Mr O unfairly and so didn’t recommend the complaint be upheld. Mr O disagreed and so the complaint was passed to an ombudsman for a final decision.

## My findings

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

The marker that Santander has filed is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Mr O is guilty of fraud or a financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous.”*

What this means in practice is that Santander must first be able to show that fraudulent funds entered Mr O’s account, whether they were retained or merely passed through. Secondly, Santander also needs to have strong evidence to show that Mr O was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

This could include Mr O allowing someone else to use his account in order to receive an illegitimate payment. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

In order to determine Mr O's complaint, I need to decide whether I think Santander had enough evidence to show fraudulent funds entered Mr O's account and that his actions suggest he was complicit in this. And having considered everything, I find that Santander has done this here. I'd like to explain why in a little more detail.

There doesn't appear to be any dispute that fraudulent funds entered into Mr O's account between May 2022 and July 2022. So the only matter which remains in dispute here is whether Mr O was complicit in the activity which took place.

Mr O has told us that he received the payments for his girlfriend's brother. His girlfriend asked him to transfer the funds to others that she owed money to and he didn't question this as he trusted his girlfriend.

I've thought about what Mr O has said. But I'm afraid Mr O's version of events not being supported by the available evidence makes it difficult to accept what he is saying at face value. I say this because Mr O spoke to Santander at the time and he said that the funds were to purchase gift cards for his girlfriend which he did.

I realise that Mr O has said that he has issues with his memory and this is the reason for his inconsistency. However, while I'm sorry to hear about what Mr O has told us and I don't wish to appear unsympathetic, his account transactions show that the fraudulent funds were transferred on to another account in his name. So it doesn't appear as though the funds were used to purchase gift cards for Mr O's girlfriend, or used to clear her debts either. And as Mr O appears to have been the primary beneficiary of the fraudulent funds, I can't reasonably say that Santander unfairly reached this conclusion.

Overall and having considered everything, I'm satisfied that Santander did have sufficient evidence to show that fraudulent funds entered Mr O's account. And it was also reasonably entitled to conclude that it was more likely than not Mr O was complicit in this. As this is the case, I don't think that it was unfair for Santander to record a fraud prevention marker in the circumstances that it did.

I now turn to the closure of Mr O's account. The terms and conditions of Mr O's account permitted Santander to close it where it was used "*in any way to give rise to reasonable suspicion of fraud or other criminal activities*". I've already explained why I think Santander was reasonably entitled to conclude that Mr O's account had been used for fraudulent purposes when explaining why it didn't act unfairly in recording the fraud prevention marker.

As this is the case, I'm also satisfied that, for much the same reasons, the terms and conditions permitted Santander to close Mr O's account without notice in the way that it did. And I'm therefore not upholding Mr O's complaint on this basis either.

I appreciate this will be very disappointing for Mr O – especially in light of the ongoing impact he's said the fraud marker is having on him. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to. Furthermore, Mr O might find that he's able to open an account with another bank as long as he applies for a Basic Bank Account, rather than a full Current Account or any such equivalent.

**My final decision**

For the reasons I've explained, I'm not upholding Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 August 2023.

Jeshen Narayanan  
**Ombudsman**