

The complaint

Mr M complains that Santander UK plc ('Santander') registered him with Cifas without due cause.

What happened

The circumstances of this complaint are well-known to both parties, so I will not repeat every detail here. But, in summary, in February 2022 four payments were sent to Mr M's account totalling over £1,500. The funds were quickly spent through cash withdrawals, card payments, ApplePay payments, and a bill payment via faster payment. After the payments were made, the sending bank got in touch with Santander to report that they had been sent as the result of a fraud.

Santander wrote to Mr M to ask him to get in touch about the payments. When Mr M spoke to Santander at the end of February 2022, their notes say he told them that the funds were from selling four pairs of trainers on online marketplace applications, which the buyer had collected from him on a date in February. He said the reason there were four payments was because of limits on sending funds through online banking. He provided screenshots from a different social media app which discussed selling some trainers, and meeting in person to do so. He said he bought the trainers from the trainer company's retail app, which he probably did by paying his mum in cash and using her card. He said he could not evidence the purchase of the trainers as he thinks he bought the trainers in 2018.

Santander were not persuaded by Mr M's version of events. They said there were inconsistencies between his story and the evidence he provided. So, they decided to close his account with 30 days' notice, and to refer him to Cifas who registered a marker against him for misuse of facility.

Mr M's representative complained to Santander. She said that Mr M had nothing to do with the payments into the account. His representative also disputed the transactions leaving the account and said that these were not authorised by Mr M. They said that Mr M had lost his card and someone else had done this, which is why they had reported it to the police – and to Santander in February, too. She said that Mr M had been questioned by the bank without an adult with him to make sure he understood what he was being asked, and this was why he gave incorrect answers when he spoke with Santander originally. Santander looked into the complaint and said it had not done anything wrong and so would not be reversing its original decision.

Unhappy with their response, Mr M's representative brought his complaint to our service. One of our investigators looked into what had happened and did not recommend that the complaint be upheld. In summary, they thought Mr M had been inconsistent in his version of events, and the lack of a point of compromise for the relevant details needed for the payments out of the account meant it was most likely that Mr M or someone else acting on his behalf had made those payments. And therefore, Mr M had used his account, or allowed it to be used, for fraudulent transactions into and out of the account. So, it followed that it was fair and reasonable for Santander to close Mr M's account and register him with Cifas.

Mr M's representative remained dissatisfied, and said in summary:

- Mr M did not complete or allow anyone to complete the transactions on his account;

- His card had been stolen – he had not given his card and PIN to anyone;
- He was at school when some of the transactions on his account took place, so they could not have been completed by him;
- No one had approached him to use his account in exchange for payment or anything else;
- Some of the transactions took place in locations he had simply never been to, so they could not have been him;
- He had been aware that she was contacting the police and was happy for her to do so;
- Transactions took place on his card in two locations close together in time, which were not geographically close together, showing that this must have been fraudulent.

This did not change our investigator's opinion and as no agreement could be reached, the case was passed to me to decide.

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.

Having done so, I have reached the same conclusion as our investigator, and broadly for the same reasons.

The type of Cifas marker that Santander asked Cifas to apply here is for 'misuse of facility' – relating to the account being used to receive and send on fraudulent funds. In order to file such a marker, Santander are not required to prove beyond reasonable doubt that Mr M is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern that such an offence took place. Cifas guidance at the time said:

- *“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 such that the member could confidently report the conduct of the subject to the police.”*

So, the relevant findings for me to make are whether I believe there is sufficient evidence to conclude that on balance, the money sent to Mr M was as the result of a fraud, and that he was deliberately dishonest in relation to this, such that Santander fairly and reasonably escalated their concerns to Cifas. I do think that Santander were entitled to do so, I will explain why.

It is not in dispute that Mr M's account was used to receive and send on fraudulent funds. The sending account holder complained that they were tricked into sending the funds as the result of a fraud. And whilst Mr M originally said he was entitled to these funds due to the sale of some trainers; it appears he is no longer asserting that he has any legitimate claim to those funds. So what is left for me to decide is whether on balance I think that it is most likely that Mr M was involved in the receipt and sending on of these funds – and whether he was deliberately dishonest in his actions with regards to these funds. And I think he most likely was. I say this because:

- Mr M has been inconsistent in his version of events between when he first spoke with Santander about the payments and now. His first version of events was that he received the funds for the sale of trainers, and that he had given these trainers to the buyer. He went so far as providing evidence of a chat between him and someone else over a social media application.
- I agree with Santander that this story did not add up. The evidence provided was not

consistent with Mr M's testimony in a number of ways including - a chat history was provided that was on a different social media platform to the two apps he named as where he sold trainers, with no name and no date on it. And the chat talks about sums for buying three pairs of trainers rather than four, and the amounts discussed do not match up with the payments into the account. Some of the payments also were made after Mr M says he handed over the trainers, and it seems unlikely he would have parted with high value trainers before receiving the funds when he did not know the person buying them. Further, it is unclear why four payments would have been required in this scenario. So, on balance, this did not seem like it was most likely what happened here.

- Mr M also said that the payments had nothing to do with him and he did not know how they happened, but that his card had been stolen. I appreciate Mr M's representative said he said this because he was only fifteen and got confused or coerced in his conversation with Santander. But I do think it seems unusual that Mr M was so specific about where the funds came from in confusion. I cannot see any similarly sized payments into the account that he could have confused these payments with. Which would imply that this story was fabricated – along with the evidence he provided Santander. It would seem strange to do this rather than just explain that he did not know what happened.
- When considering his assertion that his card was lost or stolen, it does not seem most likely that this is what happened here. I say this because the payments that went out of Mr M's account required more than just the card itself, and Mr M has not explained how an unknown third party could have had everything they needed to complete the transactions. There were cash withdrawals and card transactions which would have required his PIN code, and could not have simply been completed using his lost or stolen card. There was a faster payment out of the account which would have required security credentials. There were ApplePay payments which would have required a registered device, or registering a device using a registered phone number. I have seen nothing in evidence which explains how an unknown third party would have been able to have acquired not only his card, but all of the other information and security credentials needed to do all of this without Mr M knowing.
- I appreciate there is a possibility that Mr M did not directly complete all the transactions himself, but that does not negate his responsibility for them here. I think it is likely that if Mr M did not complete transactions himself, he allowed them to be completed. And I am unable to say on the evidence that he was unwitting in doing so.

When considering all of this, I don't think either version of events that Mr M has given are what most likely happened here. I am of the opinion that it is most likely that Mr M was complicit in the receiving of fraudulent payments. And he did not need to be aware of the exact provenance of the funds for me to make these findings, just that it was likely they were not legitimately come by. And so, it follows that Santander have met the requirements to refer him to Cifas and I won't be asking them to do anything further.

My final decision

My final decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 October 2023.

Katherine Jones
Ombudsman