

## **The complaint**

Mr S complains that TSB Bank Plc loaded a marker against him on the Cifas National Fraud Database. And he'd like this removed.

## **What happened**

Mr S had a current account with TSB.

On the 14 December 2016 Mr S received £100 into his TSB bank account. On the 15 December 2016 TSB received a report from a third party bank, I'll call B, stating that these funds were fraudulent. Mr S withdrew the funds in four transactions between the 16 December 2019 and the 19 December 2019.

TSB contacted Mr S and asked him for Proof of Entitlement to the funds. Mr S explained that he sold gaming chips – worth £100 – to an acquaintance via a social media site, I'll call F. TSB asked Mr S to provide evidence of the sale, but Mr S was unable to do so. TSB issued Mr S with an immediate notice to close and loaded a marker on his Cifas record.

Mr S wasn't happy with TSB's decision so complained. But TSB didn't change their position. So Mr S brought his complaint to our service.

One of our investigator's looked into Mr S's complaint. But didn't uphold it. They asked Mr S to provide evidence of any conversations he'd had about the sale of the gaming chips – but he was unable to provide this. So they concluded the marker was loaded fairly.

Mr S responded to our investigator's view with some evidence of conversations which took place on F with a third party. Our investigator reviewed the evidence and reached a different conclusion. After looking at the new evidence Mr S provided they were satisfied it wasn't clear Mr S had received fraudulent funds or was a witting beneficiary of them. And they asked for TSB to remove the Cifas marker.

Mr S accepted our investigator's view but TSB didn't. In summary the bank wasn't convinced the evidence showed Mr S wasn't a witting beneficiary of fraudulent funds. TSB asked for more time to review their decision. This was provided by our investigator, but TSB haven't responded to confirm their position.

Because an agreement hasn't been reached Mr S's case has been moved to me for a decision.

## **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.

And in doing so I've reached the same conclusion as our investigator, I'll explain why below.

The marker that TSB have filed with Cifas 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, they're not required to prove beyond reasonable doubt that Mr S is guilty of a fraud of financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas 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 such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr S's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr S was *deliberately dishonest* in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use his account in order to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

I've thought about whether TSB have provided evidence that fraudulent funds entered Mr S's account and he knew they were, or might be, illegitimate payments. And I don't think they have – I'll explain why below:

TSB have provided evidence of a report they received on the 15 December 2016 stating that Mr S received fraudulent funds on the 14 December 2016. So I understand the banks concerns here. Mr S did provide TSB with an explanation for the origin of the funds – and he's been consistent throughout here – namely selling gaming coins. However, until recently, he's not provided any evidence to support his explanation – despite this being requested both by TSB and our service. I've reviewed the evidence that Mr S has provided – and much as our investigator concluded I'm satisfied that this does change things. Mr S has provided a number of screenshots showing conversations with a third party via F where he's discussing selling gaming coins. The first screenshot of the chat is dated the 14 December 2016, which is the date Mr S received the funds, and the third party Mr S is conversing with has the same surname as the account holder who sent Mr S the funds.

TSB have raised a number of points regarding why they don't think this evidence demonstrates Mr S didn't receive fraudulent funds or wasn't complicit. These include that the F account isn't in Mr S's name. Our investigator approached Mr S about this, he responded that he uses his middle name for his F account, and I find this explanation plausible. Overall, I've no reason to doubt the authenticity of the conversation Mr S had with the third party – it's fits the timeline, is specific about the amount of money Mr S will receive and Mr S is speaking to a third party with the same surname as the account holder.

I've also thought about what I'd expect Mr S to have done if he'd knowingly received fraudulent funds. I accept that he withdrew the £100 over a five day period, but if someone knowingly receives fraudulent funds I'd normally expect them to move the money on, or withdraw this, much more quickly. And this didn't happen in Mr S's case.

Overall, based on the evidence I've seen, I'm not satisfied that Mr S was *deliberately dishonest* in receiving fraudulent funds. And therefore I'll be asking TSB to remove the Cifas marker. I've thought about whether any compensation should be paid to Mr S for the impact of the marker. It's clear, as Mr S has explained, that the marker has had a negative impact on him including causing him significant difficulties in opening another current account. But, I can understand TSB's reasons for loading the marker in the first place. Mr S was given the opportunity to give TSB supporting evidence, which he's only recently provided. Therefore

I'm satisfied when TSB loaded the Cifas marker it was fair for them to do so. And I won't be asking TSB to pay any compensation.

### **My final decision**

My final decision is I direct TSB Bank Plc to:

- Remove the Cifas marker loaded against Mr S in January 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2021.

Jeff Burch  
**Ombudsman**