

## The complaint

Mr A has complained that TSB Bank plc refused to refund transactions on his account, which he says he didn't make, and that it registered a fraud (CIFAS) marker against his name.

## What happened

On 4 November 2019, between 03.55 and 04.45, there were multiple faster payments, totalling £8,771.98, from Mr A's current account to a third-party account. The payments were funded by internal transfers from Mr A's savings accounts to his current account and faster payments into his account from the same third-party account.

Mr A said he was woken up at 05.00 by text alerts on his phone. When he checked his phone, he saw the transactions.

He called TSB and raised a fraud complaint. He said he didn't make any of the transactions and he didn't know the third party. He said he wasn't expecting any money from this or any other person. He told TSB that he was asleep at the time in a locked room. He said he owned two mobile phones – an android and an iPhone. He said he kept his iPhone in a wardrobe in his bedroom. He'd stopped using it in August 2019, when his employer gave him a work phone. He said he hadn't disclosed his passwords for his phones or his mobile banking log in details to anyone and he hadn't kept a written note of this information. He confirmed that he hadn't received any suspicious texts or emails and he hadn't had any issues with his phones. He said the transactions were out of character for him and that he'd never made transactions at that time of day or night.

He asked TSB for a refund.

TSB investigated his complaint and decided not to refund him. It said there was no evidence of fraudulent activity and concluded that Mr A had made the transactions himself because:

- an iPhone, registered to his account, was used to make the internal transfers and payments from his account. He had used this device before.
- The log in was done via the mobile banking app. His log in details would have been needed to make the transactions.
- There was no evidence of how a third party gained access to his iPhone, as Mr A said it was stored in a wardrobe in the room he was sleeping in and that room was locked at the time.
- Mr A said he hadn't shared his log in details or password for his iPhone with anyone else.
- It wasn't likely a fraudster would transfer money to his account.

Subsequently, TSB closed his account and registered a CIFAS marker against

Mr A's name. Mr A didn't think this was fair and so he asked this service to investigate.

An investigator looked into his complaint and recommended a partial uphold. In summary, he felt unable to conclude that the disputed payments had been made fraudulently and was persuaded they were most likely made and authorised by Mr A. However, he didn't agree TSB had satisfied the test for registering the CIFAS marker and he asked TSB to remove it.

Mr A didn't accept the investigator's view that he had authorised the disputed payments. He said he believes he should get his money back or 'some sort of compromise.' He also asked for the CIFAS marker to be removed. TSB disagreed with the investigator's view on the CIFAS marker. It said it had taken advice from CIFAS and it was satisfied it had met the test for registering a marker. Both asked for an ombudsman's final decision.

I completed a provisional decision on 2 December 2020. I decided it was more likely than not that Mr A had authorised the disputed transactions and that it was reasonable for TSB to hold him liable for them. I also decided that TSB had satisfied the test for registering the CIFAS marker.

TSB accepted this outcome. Mr A didn't. He maintained he didn't commit a fraud and that he wouldn't throw away his future for £8,000. He said it made no sense for money to be transferred back and forth between his account and a stranger's account. He said he didn't gain financially from the disputed transactions and as he didn't commit a fraud, there shouldn't be a fraud marker against his name.

I now have enough information to make my final 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. These considerations are set out in my provisional decision and so I won't repeat them here.

Having reviewed the evidence, arguments and relevant regulations, I'm afraid I've reached the same conclusion as I did in my provisional decision. Where appropriate, I've referred to the points Mr A made following that decision.

The bank's technical evidence shows Mr A's iPhone was used to make the disputed payments together with his log in details for the mobile banking app. I'm satisfied, therefore, that the disputed payments were authenticated. But the regulations relevant to this case say that is not, on its own, enough to enable TSB to hold him liable. So, I've considered whether the evidence suggests that it's more likely than not that Mr A made the disputed payments himself.

From what I've seen, I don't think it's unreasonable for TSB to conclude that Mr A made the disputed payments himself. Not only was his iPhone used, but the evidence also shows that biometrics were used to log in to the mobile banking app and to make the first payment.

There's no evidence of any password resets, a sim swap or that Mr A's phone had been redirected – all of which might point to third party activity. And the transactions were made from an IP address, which had been used in the past for genuine transactions, thus ruling out remote access to his phone by a third party.

Originally, Mr A told TSB that both his phones were secured using biometrics. When TSB explained that meant only he could access his phones – and especially if his room was locked at the time - he changed his evidence to say that he logs in using three characters from memorable information. But even if this were true, Mr A hasn't provided a plausible explanation for how a third party gained access to his iPhone, which was in a locked room, or knew his log in details. He confirmed that he hadn't written down this information or shared it with anyone else. So, on his own admission, only he knew the log in details for his iPhone and only he had access to it. Also, as I've already mentioned, TSB said biometrics – either fingerprint or facial recognition – were used to log in to the mobile banking app which means only Mr A could do this.

Mr A didn't respond to this evidence in his reply to my provisional decision. And he hasn't provided any evidence showing any faults or tampering with his phones.

I've also considered the fact there were credits into Mr A's account totalling £8,584.01. The credits came from the third-party account. The money was paid back to the third-party account. Mr A said it makes no sense for him to do this. He asked why he would do this. I agreed this was very odd. But I think it's equally unusual for an unknown third party to make payments into a victim's account and send it back, as the risk of being caught is very high. I'm afraid I'm not persuaded, therefore, that an unknown third party paid these credits into Mr A's account.

In summary, I'm afraid I don't find Mr A's testimony to be persuasive or plausible. As well as the change in his evidence about how he logs in to his iPhone, he said he'd stopped using it in August 2019 as his main phone, that he'd wiped it and kept it stored in a wardrobe. He said he used his iPhone occasionally if his other phone needed recharging. He told this service he often forgot his mobile banking password and had to reset it. He also said that he'd never made transactions in the middle of the night.

However, his evidence is contradicted by the technical evidence. The bank's online audit report shows that he was logging in to his mobile banking app regularly throughout September, October and November 2019 and he had made payments during this period. He couldn't have wiped his iPhone, if he were using the mobile banking app. And, there was no evidence that he'd reset his password.

Also, the bank's transactions reports show that he had made transactions at this time of night/day in the past, for example:

- 4 June 2019 at 12.46am
- 21 June 2019 at 1.54am
- 27 July 2019 at 12.21am
- 15 August 2019 at 1.23am
- 1 September 2019 at 3.56am
- 25 September 2019 at 12.20am
- 24 October 2019 at 1.08 am
- 25 October 2019 at 12.30am
- 3 November 2019 at 12.20am

Again, Mr A didn't comment on any of this evidence in his reply to my provisional decision.

Based on all the evidence, I'm afraid I think it's more likely than not that Mr A authorised the disputed payments and I consider that it's fair and reasonable for TSB to hold him liable for them.

I've considered his complaint that TSB should have been alerted to the activity on his account. The banks don't share the details of its anti-fraud detection systems with this

service, for obvious reasons. This is highly commercially sensitive information. Despite this, I'm afraid I don't consider there were any obvious signs of fraud which should have prompted the bank to send a text message. This is because the disputed payments were made with a trusted device, the IP address had been used for genuine transactions and it wasn't unusual for Mr A to make transactions late at night or in the early hours.

### **CIFAS**

I won't repeat the test for registering a CIFAS marker. Our investigator has already explained it in his view. It doesn't always follow that a bank must register a CIFAS marker when it, or this service has rejected a fraud complaint. That's because the relevant regulations talk of *unauthorised* transactions. There are occasions when a disputed transaction is treated as authorised, but the claim isn't fraudulent.

However, I think it was clear from the technical evidence in this case that Mr A wasn't completely truthful with this service or TSB. And as there's no credible alternative scenarios for how the transactions were made e.g. that he shared his details with someone he knew, and they made the transactions, then I'm afraid I have no option but to conclude that Mr A has made false representations with a view to making a financial gain. I note Mr A said he hasn't gained financially and that he is now out of pocket by £8,000. However, by making a claim against TSB he was hoping for a refund, which would be regarded as a financial gain.

In these circumstances I consider that TSB has met the test for a CIFAS marker and that it has acted fairly and reasonably.

I appreciate that a CIFAS marker can have an impact on a customer's ability to access financial services. A CIFAS marker shouldn't automatically cause a bank or other financial service provider to decline an application for goods or services. The CIFAS principles state that financial service providers must interpret the information in a proportionate manner, in other words as appropriate and relevant having regard to its products and risk appetite. However, I accept Mr A won't find this reassuring.

I'm sorry this isn't the outcome Mr A was hoping for, but I trust the reasons for my decision are clear.

### **My final decision**

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 February 2021.

Razia Karim  
**Ombudsman**