

The complaint

Miss T complained because TSB Bank plc recorded a marker against her name on the anti-fraud database CIFAS.

What happened

Miss T opened an account with TSB on 16 December 2020. On 13 January 2021, a £6543.79 credit was paid into the account, and immediately transferred out by faster payment to an account elsewhere which was in the joint names of Miss T and another person. TSB then received information that the money paid into Miss T's account had been the proceeds of a scam. It blocked the account.

Miss T rang TSB about the block on her account. She said she had a joint account elsewhere with someone, and she thought that person might have logged into her TSB account. The adviser asked if she'd given her bank details to someone else to transfer money through her account. Miss T said she had an account elsewhere with that person, so she thought she might as well share her TSB account with him too. The adviser said she couldn't do that under the terms and conditions.

The adviser asked a number of questions. These included asking whether Miss T had been expecting the £6543.79 credit. She replied that she didn't know much about it and didn't care if TSB took it away. The adviser asked whether Miss T had transferred the money out, or her friend, and she said her friend.

The adviser told Miss T that based on her replies the account would immediately be closed. Miss T said *"oh, ok."* TSB's adviser asked Miss T whether she had any questions. In reply, Miss T asked whether there was any money left in the account. The adviser said there was £43.54 which TSB would take out, but which it wouldn't be providing to Miss T. Miss T said *"oh that's fine, that's all right"* and the call ended.

TSB sent the remaining £43.54 balance to the bank of the person who'd been scammed, and closed Miss T's account. It recorded a CIFAS fraud marker against Miss T's name, which would stay on her name for six years.

Miss T complained. In TSB's final response letter, it said that it wasn't required to give Miss T notice to close her account in these circumstances. It said Miss T had told them she'd given her bank details to someone else, which wasn't allowed under the terms and conditions. TSB also said that, in line with its duties as a regulated financial service, it confirmed that it had applied a CIFAS marker against Miss T, and on review it was satisfied that it had applied the marker correctly.

Miss T complained to this service. She said that when she'd phoned TSB, she hadn't been able fully to tell it the way she wanted to. She said the way she explained it made it look as if she gave her bank details to her friend but she hadn't. She said she wouldn't do anything to jeopardise her banking and it was now causing issues with other banks too. She said she was innocent and wanted it resolved because it had caused her stress because TSB

wouldn't hear her out. She said she had every right for the CIFAS marker to be taken off because TSB was unfair and she hated having to prove her innocence. She said she didn't get to say this in the phone call because she hadn't wanted TSB to record the phone call.

Our investigator asked Miss T for more information. Miss T had told our investigator that she'd fallen out with her friend after what happened, as he'd used her phone for the transactions, so the investigator asked for any messages or other evidence of that. The investigator also asked how the friend had got access to Miss T's phone. Miss T replied that she'd left her phone with the friend for a while, because she needed him to do something for her. She said she didn't have any messages or evidence about having fallen out with him.

Our investigator didn't uphold Miss T's complaint. She noted that Miss T had given this service a different account of events from the version Miss T had told TSB in her phone call. She said she didn't think there was enough evidence to confirm Miss T's second account of what happened. And she thought TSB had grounds for recording the CIFAS marker, so she wouldn't be asking TSB to remove it.

Miss T didn't accept this. She said she was innocent, and would have just left it by now if she hadn't been innocent. She said she hadn't done anything wrong but it was her friend. She said she was the victim and she wouldn't rest until it was fixed.

The complaint was referred to me for an ombudsman's 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.

This includes listening to the call recording from when Miss T rang TSB.

CIFAS is a fraud prevention agency. It maintains a large database, in order to protect financial organisations and their customers against fraud. The criteria for member organisations to record information with CIFAS is that it must be supported by evidence, and meet four requirements:

- That there are reasonable grounds to believe that a fraud or financial Crime has been committed or attempted;
- That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct to the police;
- The conduct must meet the criteria of one of the CIFAS case types. In Miss T's case, this was that there had been a misuse of a facility;
- The organisation recording the marker must have rejected, withdrawn or terminated a product on the basis of fraud.

This means that a bank can't apply a CIFAS marker if it just suspects fraud. It needs to have evidence to back that up, with a criminal offence identifiable, so it could confidently report the customer to the police. So there is a high standard of proof required.

I've considered whether TSB acted fairly, and in line with the strict requirements of CIFAS, when it applied a CIFAS marker against Miss T's name. I find that it did. The evidence it had showed that a criminal offence had been committed, with proceeds of a scam being credited to Miss T's account. The money was then immediately moved to an account elsewhere, of which Miss T was a joint account holder. I recognise that Miss T says she's innocent, and that her friend was responsible. But I've listened very carefully to the phone call recording,

and in that, Miss T said she'd given her TSB details to her friend. She said they had a joint account elsewhere so she thought she might as well share her TSB account with him too.

This is different from what Miss T later told our investigator – when she said she gave her phone to the friend to do something, and he'd received the fraudulent money and transferred it. She said she'd then fallen out with the friend - but said she'd deleted the messages which proved that.

I also note that in the call with TSB, Miss T made no objection when she was told the account would be closed immediately. She's since said that on that call, TSB "wouldn't hear her out" but listening to the recording, that's clearly not correct. TSB's advisor was polite and specifically asked Miss T whether she had any questions. In response, Miss T just asked if there was any money left – and when TSB said it wouldn't be returning the £43.54 to her, Miss T just accepted it.

Miss T has also said she didn't get to say what she wanted in the TSB phone call, because she hadn't wanted TSB to record the phone call. I'm not persuaded that a call being recorded by a bank would be a valid reason for an innocent person not to say what they wanted to.

In view of the evidence which TSB had about what had happened, I consider it acted fairly, and in line with the strict requirements of CIFAS, when it recorded the marker against her.

Finally, for completeness, TSB also had the power to close Miss T's account immediately. Section 16 of the terms and conditions of Miss T's account sets out the circumstances under which TSB was entitled to close the account immediately. One of these is if the customer acted fraudulently. So I find that TSB did nothing wrong when it closed Miss T's account without notice.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 1 June 2022.

Belinda Knight
Ombudsman