

The complaint

Mr O complains TSB Bank plc (“TSB”) unfairly registered a fraud marker against him and closed his account.

What happened

Mr O opened a TSB account in April 2020. Later that month he received several payments into his account, which he withdrew on the same day. The payments into Mr O’s account which were dispersed were reported to TSB as fraudulent by other banks.

TSB carried out a review and decided to close Mr O’s account with immediate effect and applied a CIFAS fraud marker against him. Mr O says he had no knowledge he was the recipient of fraudulent funds and intended to send them back.

He wants the CIFAS marker removed as he is unable to open a bank account which is causing him substantive inconvenience.

TSB did not uphold Mr O’s complaint. The matter was then referred to our service. One of our Investigators looked into the matter, and in summary they found:

- CIFAS applied the misuse of facility marker fairly against Mr O as it had enough evidence to do this
- Mr O was likely complicit with the fraud as the activity was unusual and consistent with fraudulent behaviour. Also, Mr O said he thought the funds were from his mother or income from contractual work. But if that was the case, he would’ve been able to check if it was his mother who sent them to him, and if he wasn’t expecting them, its questionable why he withdrew them so quickly

Mr O hasn’t given strong enough evidence to show he was expecting payment from paid contractual work for the amounts that entered his account to explain why he had withdrawn them

As Mr O was unhappy with what our Investigator concluded, the matter has now been 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 that, I’ve decided not to uphold this complaint. I know this will disappoint Mr O, so I’ll explain why.

CIFAS marker

The marker TSB have filed with CIFAS is intended to record there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds.

To file such a marker, TSB's not required to prove beyond reasonable doubt Mr O is guilty of a fraud or financial crime, but they must show 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 fraudulent funds have entered Mr O's account, whether they are retained or pass through the account. Secondly, TSB will need to have *strong* evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether TSB has enough evidence to meet the standard of proof and load a marker for misuse of facility with CIFAS.

TSB have shown me internal records which show it received reports from other banks of fraudulent funds being received into Mr O's account from its customer's. Mr O accepts these were fraudulent funds – albeit he says he thought they weren't when he first received them. So, I'm satisfied TSB have shown fraudulent funds entered Mr O's account.

TSB haven't been able to show Mr O was deliberately dishonest and knew the payments might be, or were, illegitimate. Because of this I think TSB should have investigated the matter better than it has – it needs to have had enough evidence Mr O was witting.

Having said that, our Investigator has spoken to Mr O about the funds he received and why he spent them as soon as they came in. I have listened to this call and Mr O says they were likely sent to him by his mother or from contractual work.

The TSB account was recently opened in April 2020. The payments into the account were from private individuals, not companies Mr O says he worked for. The evidence Mr O has given to us does not show he was expecting the amounts he received.

Mr O says he doesn't have the exact payslips anymore – but he does have older ones. That is unfortunate. Having thought about this, I find this explanation implausible and unsubstantiated. That's because he could've checked the source of funds, and there's no compelling evidence he was expecting these funds in the way they entered his account.

Secondly, Mr O suggests the money may have been from his mother. He wasn't expecting any money from his mother – so I question why Mr O didn't query her about it before withdrawing the money so quickly. This in turn would have led him to discover or question the source of funds. And, if he was unwitting, discover they may have been sent to him, at best, in error.

Mr O could easily have checked where these payments had come from before quickly withdrawing them as he did. Both the explanations Mr O puts forward are also inconsistent with each other, he was either expecting contractual income or there was good reason why his mother would have sent him the funds.

On balance, having carefully weighed things up, I'm persuaded it's likely Mr O was complicit and knew the payments into his account were illegitimate. As I said before, this is something TSB should have looked into before applying the marker. But, given what I've said above, I think it has added the marker fairly and the standard of proof required to load such a marker has been met.

Account closure

Banks in the UK are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

A bank is entitled to close an account just as a customer may close an account with a bank. But before a bank closes an account, it must do so in a way, which complies with the terms and conditions of the account.

Having carefully reviewed the information TSB have given me, I think it acted fairly by closing Mr O's account in the way it did. I say that because TSB applied its terms fairly given it had genuine concern about Mr O's activities.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 27 May 2022.

Ketan Nagla
Ombudsman