

## **The complaint**

Mr D complains that TSB Bank plc has registered a marker at CIFAS, the national fraud database.

## **What happened**

Mr D says that a past school friend introduced him to someone who traded in crypto currency. That person got access to his account and used it to move money. He says that this happened at a different financial business too and he had a letter about that business' investigation. The CIFAS marker has led to his main bank account being closed and he wants this marker to be removed.

TSB said it hadn't made any mistake. It had received reports that fraudulent funds had been sent to Mr D's account. The fraud department carried out a review and awaited contact from Mr D for any explanation. He didn't get in touch and so his account was closed and a CIFAS marker added.

Our investigator didn't recommend that the complaint be upheld. She wrote to Mr D and tried to contact him by phone, but he wasn't known at the number he's given this service. She asked him to provide the letter from the other financial business and wanted to get a further explanation from Mr D about what happened. And for his information about three payments into his account on 23 July 2021 and another three on 25 July 2021 which totalled over £27,000. Mr D got in touch to say that he thought he had the letter but now had to go back to the other business for a copy. He didn't give any of the other information that had been requested.

Our investigator said that as a result she couldn't put much weight on what he'd said and so thought that the high bar for adding a marker had been met here. As a result, it was reasonable for TSB to decide to close his account.

As Mr D didn't agree with the investigator the case was passed to an ombudsman for review.

## **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.

I've noted that Mr D has been asked several times now for information by our investigator. I appreciate from what he's said that the nature of his job means that he may have difficulty getting in contact at times. But he emailed this service on 24 June and 1 July 2022 and so I'm satisfied he's aware of the information that would assist our investigation. He's not asked for any extended time to provide this and I conclude that it is now fair for me to reach a final decision based on what is available.

I need to consider whether the report to CIFAS was made fairly. On this point, TSB needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would

support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer 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 their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I'm satisfied from what I've seen that TSB received reports that high value payments into Mr D's account as referred to by our investigator were reported as fraudulent by the sending banks. The money was quickly moved out from Mr D's account and appeared to be sent to a crypto currency business. Mr D didn't provide any explanation to TSB before his account was closed. When he later complained he gave a similar explanation to the one he gave this service when he referred his complaint.

While I accept that it's possible that Mr D was scammed into allowing his account to be used in this way he hasn't provided any evidence to support this. Or to show that his account was somehow taken over. Having balanced all the information I find it most likely that he was a witting participant in what happened and reasonably knew this money wasn't legitimate. His bank account was used to move fraudulently obtained funds.

TSB says that it applied the CIFAS marker because Mr D received fraudulent funds into his account. So, I've looked at whether TSB was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that TSB needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr D's account of events and the evidence TSB has provided, I'm satisfied that TSB had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr D received fraudulent funds into his account and didn't report this to TSB at the time.
- He was in control of who had the benefit of this money in his account.
- TSB had grounds to believe that Mr D had used fraudulently obtained funds based on the evidence it had.

I think TSB was entitled to make a commercial decision to close his account in these circumstances. I appreciate Mr D will be very disappointed by my conclusions.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 September 2022.

Michael Crewe  
**Ombudsman**