

## Complaint

Miss S is unhappy that TSB Bank plc (“TSB”) recorded a fraud prevention marker against her.

## Background

During the period between April 2022 and June 2022, Miss S’ TSB account received 37 payments totalling around £601 from another of TSB’s customers who I’ll refer to as X. TSB was subsequently contacted by X who said that they’d been scammed into making these payments to Miss S’ account. TSB reviewed Miss S’ account and as a result of its investigation, it decided to close Miss S’ account and record a fraud prevention marker.

Miss S complained to TSB. TSB looked at Miss S’ complaint and didn’t uphold it. As Miss S remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss S’ concerns. She didn’t think that TSB had done enough to show that Miss S was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss S. TSB didn’t agree and so the complaint was passed to an ombudsman for a final decision.

## My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The marker that TSB has filed with 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, it isn’t required to prove beyond reasonable doubt that Miss S is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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 TSB must first be able to show that fraudulent funds entered Miss S’ account, whether they were retained or merely passed through. Secondly, TSB also needs to have strong evidence to show that Miss S was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Miss S allowing someone else to use her 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 complicity.

To meet the standard of proof required to register a fraud 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.

In order to determine Miss S' complaint, I need to decide whether I think TSB had enough evidence to show fraudulent funds entered Miss S' account and that she was complicit in this. It's important to note TSB had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, it is clear that TSB was contacted by one of its customers saying that they'd been scammed into making a number of payments into Miss S' account. So I can understand why TSB had concerns about the usage on Miss S' account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. TSB also has to produce sufficient evidence to show Miss S was complicit in fraud. And I don't think that it has done that here.

Miss S has explained that the payments in question were from someone whom she met online, whom she was talking to regularly and was planning to meet. However, she wasn't able to find the time to do so because of her family commitments. And after an argument over meeting X, they blocked her messages which prevented her getting in contact. Our adjudicator found Miss S' version of events plausible and she thought that TSB didn't have enough to show that Miss S dishonestly obtained the funds from X.

TSB has referred to the fact that Miss S asked X for funds saying that she didn't have money to buy food and pay for transport when it could see that she had money in her accounts. I've looked at the statements provided. And while it's fair to say that Miss S was never down to a zero balance, I think it's somewhat overstating matters to say that she was ever in possession of significant funds. And while TSB has referred to Miss S' account activity it's clear that similar amounts were going back to her current account around the times she was making transfers to her savings account. Furthermore, the messages provided suggest that X was sometimes sending funds to Miss S unprompted.

TSB says that X went overdrawn as a result of sending Miss S all of their funds and that once they told her that they couldn't send anything more Miss S blocked their messages and ceased all contact. But it hasn't provided anything to support this. I accept that X might have gone overdrawn. However, the messages provided do not clearly confirm that Miss S stopped communicating with X because of this or because he refused to send further funds, in the way that TSB appears to be suggesting.

As I've explained, it is TSB's responsibility to demonstrate that Miss S was knowingly engaged in fraudulent activity, it isn't for Miss S to have to disprove this. And I think that TSB has failed to do that here. TSB needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, in this case, a reasonable suspicion that Miss S obtained the funds in question fraudulently.

Having considered everything provided, I don't think it has done that here. The information provided show that X was sending Miss S funds, which isn't in dispute and which Miss S hasn't ever denied. And it's just as, if not more likely that X reported being a victim of fraud because they later regretted sending the funds than it is that Miss S never intended to meet them at the outset.

Overall and having considered everything, I don't think that TSB had sufficient evidence to meet the test for recording a fraud marker against Miss S. In my view, the evidence and arguments TSB has supplied isn't enough to clearly show that Miss S was deliberately dishonest. As this is the case, I think that it was unfair for TSB to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss S' complaint and TSB needs

to remove any and all fraud markers it has recorded against Miss S.

**My final decision**

For the reasons I've explained, I'm upholding Miss S' complaint. TSB Bank plc should remove any and all fraud markers it has recorded against Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 24 February 2023.

Jeshen Narayanan  
**Ombudsman**