

## The complaint

Miss G complains that TSB Bank plc has rejected her claim for a refund under its Fraud Refund Guarantee ('FRG'). She's also unhappy with how her fraud claim was handled and TSB Bank's decision to close her account.

## What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of the events below.

In November 2020, Miss G made two payments from her TSB Bank account totalling £3,995 to a company which I'll refer to as 'R' for a cosmetic surgery procedure. The first payment was a debit card payment of £500 and the second was a faster payment of £3,495. Miss G says she attended her scheduled appointment, but the practitioner did not carry out the agreed procedure. She says following a procedure (not what she was expecting), the practitioner left the clinic, and she remained with the receptionist till she could leave. Miss G has explained that she'd suffered visible injuries and alleges that she'd been "*drugged and assaulted*".

Miss G appointed a solicitor to pursue a civil claim against the practitioner. She also reported the matter to the police.

In September 2022 Miss G contacted TSB Bank to raise a fraud claim after hearing about its FRG. Ultimately TSB Bank didn't agree to refund the disputed payments. It considered this to be a civil matter between Miss G and the practitioner. Around that time, it also took the decision to close Miss G's account.

Miss G complained. TSB Bank issued its final response in October 2022. In summary, it maintained that its decision to decline Miss G's fraud claim and not reimburse her under the FRG was correct. It also didn't uphold her complaint about its handling of the fraud claim and it was satisfied that it had not made a mistake in the decision it had taken to close Miss G's account.

Miss G didn't agree. She referred her complaint to our service. Our Investigator looked into things and partially upheld Miss G's complaint. She concluded that whilst she didn't think TSB Bank had done anything wrong in declining Miss G's fraud claim. During a call between Miss G and TSB Bank, its staff member had incorrectly misled Miss G into believing that she would receive a refund. Our Investigator felt £100 was a fair way to compensate Miss G for the impact of the mismanagement of her expectations. TSB Bank accepted the Investigator's outcome. Miss G remained unhappy. She asked for an Ombudsman to review her complaint.

On reviewing the file I agreed with our Investigators outcome but I thought it would be helpful for me to share with Miss G more detailed reasoning for why I couldn't ask TSB Bank to do anything more than what our Investigator had recommended. There were also some additional points raised by Miss G, which our Investigator had not commented on. So I wrote to Miss G and TSB Bank explaining my thoughts. In summary I said:

- I understand the crux of Miss G's complaint to be that she'd like TSB Bank to refund, under its FRG, a £500 debit card payment and a £3,495 bank transfer she'd made in November 2020, to R, for cosmetic surgery. She would also like TSB Bank to compensate her for the stress and loss of earnings which she says were caused by the ancillary issues of TSB Bank's handling of her fraud claim, and its decision to close her account.
- Miss G says she did undergo some treatment, but it wasn't what was agreed. She argues she's been the victim of a scam. It is her belief that the practitioner's intent from the outset was to defraud her. Her reasons are that; she thinks the practitioner had got himself into financial difficulties and needed the money to leave the country; and because she later learned, via another practitioner, that there was no need for the treatment she'd paid for, so she now believes the intent was to profit from an unnecessary medical procedure.
- Medical malpractice is most often a civil matter where a victim may receive compensation for damages. It is where a hospital, practitioner or health care provider has failed to adhere to the appropriate standard of care. It would appear that Miss G has, through a solicitor, pursued a civil claim against the practitioner. But she says this has not resulted in the recovery of the money paid to R.
- The burden of proof required for this to be criminal malpractice, or a case of fraud is high. And I haven't seen sufficient evidence that meets the high legal threshold for fraud – and that persuades me that the practitioner's intent at the time of taking the payments was to defraud Miss G. As explained by our Investigator the individual was a registered practitioner. And later cancelling their indemnity insurance policy and not filing accounts at Companies House does not prove that, at the time of taking the payments, the practitioner's intent was to defraud Miss G. Based on everything I've seen I can't say the conclusion TSB Bank and our Investigator have reached about this being a civil matter – not fraud – is unreasonable.
- Miss G also alleges that the practitioner drugged and assaulted her, and she has since discovered several others have had a similar experience. But I can only consider the actions of TSB Bank – not the practitioner. And the nature of these claims is criminal (not fraud related) and a matter for police to investigate and the courts to decide – not TSB Bank or our service.
- I can, of course, understand why TSB Bank's decision to close Miss G's account would feel unfair to her. But under the remit of its commercial discretion as a business, TSB Bank is entitled to decide who it provides an account to and can close a customer's account if it wishes. This goes both ways as a customer is also entitled to close their account if they wish. This being said, TSB Bank must do so in line with the terms and conditions – which I can see it did in these circumstances. So, while I appreciate Miss G's frustration, I can't say TSB Bank did anything wrong or acted unfairly in reaching their decision to close her account.

- I've considered TSB Bank's actions whilst handling Miss G's claim (which I note was almost two years after the event) – and I think a certain number of calls and possible branch visits can be expected when raising a fraud claim. I appreciate, in one of the calls that took place between TSB Bank and Miss G, it's staff member mismanaged Miss G's expectations about receiving a refund. But I think the compensatory offer of £100 recommended by our Investigator for the impact of this and the customer service issues Miss G has described (including those around account closure) is fair. Also, for clarity such failures would not be grounds upon which I could fairly and reasonably ask TSB Bank to refund the sum Miss G paid for the cosmetic surgery, nor does it create a basis upon which a claim outcome would differ under TSB Bank's FRG scheme. I also can't fairly ask TSB Bank to compensate Miss G for stress or loss of earnings caused by the practitioner's – not TSB Bank's – actions.

TSB Bank responded to say it had nothing further to add. Miss G did not agree. She didn't think the outcome was fair. She said she's carefully read TSB Bank's FRG and was told by its staff member that her claim falls within its scope.

### **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.

There is no ambiguity about the fact that TSB Bank's FRG is an initiative that the bank introduced to provide its customer's protection against fraud – with the emphasis on 'fraud'. So one of the most crucial considerations is whether the disputed payment(s) have been made as a result of fraud, or a scam. I know Miss G feels strongly that she is eligible to receive a refund under the FRG as the practitioner's actions were criminal, and it is her belief that his intent was always to defraud her. But, after taking everything into careful consideration, on balance, I can't say the reasons Miss G has given nor the evidence I've seen meets the high legal threshold and burden of proof for fraud. Instead, and while I know Miss G disagrees, this appears to be a case of a civil dispute and not a scam. So I can't agree with Miss G that TSB Bank by refusing to refund her payments under its FRG has treated her unfairly.

I understand Miss G feels very strongly that her complaint should be upheld and naturally she is disappointed. But as neither party have provided any new evidence or comments for me to consider, I see no reason to deviate from the outcome I've previously explained.

### **Putting things right**

I require TSB Bank plc to pay Miss G £100 compensation.

### **My final decision**

My final decision is that I partially uphold this complaint. I require TSB Bank plc to pay the redress as set out above at 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 17 May 2023.

Sonal Matharu  
**Ombudsman**