

The complaint

Mrs K has complained that TSB Bank Plc registered a marker against her at CIFAS, the national fraud database.

What happened

In early 2021, Mrs K opened a current account with TSB and paid in a small amount of money. Her card and PIN were then used to put the account into an unauthorised overdraft using two “pay at pump” petrol transactions.

“Pay at pump” transactions work by using the card to pre-authorise a payment before the exact amount is known. That means it’s possible to get payments approved that are larger than the balance of the account. Fraudsters sometimes take advantage of this by opening new accounts and running up overdrafts using pay at pump payments. TSB thought that’s what Mrs K did here. They closed her account and registered a marker at CIFAS.

Mrs K said she didn’t receive the card or PIN. She came to our service.

Our investigator looked into things independently and didn’t uphold the complaint. They found that what happened indicated a pay at pump scam had taken place.

Mrs K asked for an ombudsman to look at things afresh. She explained that before the card and PIN arrived, she had to leave her address and go to temporary accommodation due to an emergency situation. She provided letters to back this up. So she says she really didn’t receive the card or PIN. The complaint’s been passed to me to decide.

I sent Mrs K and TSB a provisional decision on 14 June 2023, to explain why I thought the marker should now be removed. In that decision, I said:

I need to consider whether this report to CIFAS was made fairly. On this point, TSB needed to have more than just a suspicion or concern. They need to be able to show they had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities.

This case is finely balanced. On the one hand, I accept that the series of events fits with what might happen if Mrs K tried a pay at pump scam. And I accept it seems odd that Mrs K would order a card and PIN to an address she might be leaving, or that she wouldn’t tell TSB about the change of address earlier, or that she’d make a small credit to the account but not otherwise use it. But those points are circumstantial rather than conclusive. And on the other hand, I can see that Mrs K had to leave her home in an emergency and take her family with her – so I can understand if this account was not at the forefront of her concerns.

TSB have not been able to provide the proper technical evidence to show that Mrs K's genuine card and PIN were used here. So I can't be certain that the disputed payments were properly authenticated.

Even if I accept that the genuine card and correct PIN were definitely used, I can see that by the time the card and PIN were sent to Mrs K she'd left that address. So I can't be reasonably satisfied that she received them, and it does leave open the possibility that someone else got them instead.

TSB questioned how a fraudster would know that Mrs K had credited the account. But with the card and PIN, they could have simply checked the balance. And again, TSB have not provided the necessary technical evidence to rule out that any balance checks took place.

TSB also said Mrs K initially told them that she'd lost the card, rather than that she didn't receive it. But as I understand, that conversation was carried out with a staff member in another language, then that staff member translated what was said and relayed it to another staff member over the phone, who recorded the notes. So it seems very plausible that there could have been some miscommunication there. Mrs K has otherwise been consistent that she didn't receive the card, and what she's said seems credible.

I accept I cannot rule out the possibility that Mrs K committed fraud here. But in light of the new evidence she's provided, I also cannot rule out that she was the victim of fraud instead. Ultimately, the card and PIN were sent to a property that Mrs K was not resident at at that time, and so I cannot be reasonably satisfied that she carried out the disputed transactions. So I find that TSB no longer have the balance of evidence needed to quite meet the bar of keeping this CIFAS marker in place. And so while I am fully conscious of the risk that Mrs K did something wrong, I think the risk of Mrs K being an innocent party is too great to justify this CIFAS marker remaining.

I've also thought carefully about whether TSB should pay Mrs K any compensation for registering the marker. But I'd only award compensation if I thought TSB had done something wrong. Here, TSB had sufficient grounds to close Mrs K's account and register a CIFAS marker based on what they knew at the time. After all, it really did look like she'd tried a pay at pump scam, and they didn't have the letters she's now provided. So it seems reasonable that TSB initially put the marker in place. I think it should just be removed now.

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.

In response to the provisional decision, TSB said they didn't feel the evidence proved that Mrs K was residing at a different address at the time of the transactions. But they agreed to remove the marker in this particular instance.

I'm grateful to TSB for agreeing to remove the marker. I accept we can't be certain of where Mrs K was at the time of the payments themselves. And I accept that TSB had good reasons to add the marker when they did. But the key point is that when the card and PIN were sent, Mrs K was no longer at that address. So I can't be reasonably satisfied that she received them – it's very much plausible that someone else did. And it was that card and PIN which were used to make the disputed payments. So I still think that in light of this new evidence, the marker should now be removed.

In her response to the provisional decision, Mrs K thanked us for helping her, but asked if we'd also consider directing TSB to pay her compensation. She explained that following the addition of the marker, she'd faced severe difficulties in receiving an income, in getting credit, and in her mental health.

I'm grateful to Mrs K for being open with us about this, and I do recognise how tough the times she described would be. I should explain that I'd only award compensation here in order to put right something which TSB did wrong. But here, TSB didn't get things wrong – they had sufficient grounds to close Mrs K's account and register a marker based on what they knew at the time. It's only in light of new evidence that I think they should now remove it. I also need to keep in mind that, objectively speaking, it's still very much plausible that Mrs K did commit fraud here. It's just I've found that TSB no longer quite have the balance of evidence needed to safely conclude that she did, and so to keep the marker in place.

Mrs K's representative also asked about the possibility of reopening this account. I can understand why Mrs K might want this, but I can't fairly direct TSB to reopen the account here. In much the same way that Mrs K can choose who she banks with, TSB can broadly choose who banks with them. And they had a sufficient basis to close the account in the way they did here. I don't think it would be appropriate for me to make them reopen it in this case.

So after careful consideration, I've come to the same conclusion as before. I think the disputed transactions and the resulting marker should now be undone, though I don't award further compensation.

Putting things right

I direct TSB Bank Plc to:

- remove any fraud marker they placed in relation to this incident;
- rework the account to remove the disputed transactions and any related interest and fees;
- pay Mrs K any remaining positive balance that's then left in the account (this should be around £1 or so); and-
- remove any negative information about the account from Mrs K's credit file.

My final decision

For the reasons I've explained, I uphold the complaint, and direct TSB Bank Plc to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 1 August 2023.

Adam Charles
Ombudsman