

The complaint

Mrs C complains that TSB Bank plc closed her account and loaded a negative fraud marker against her on the national fraud database. She'd like the marker removed and compensation for the impact.

What happened

Mrs C had two accounts with TSB, a spend and save account and a cash account which was opened in February 2022.

On 8 April 2022 £15,900 was received into Mrs C's cash account. Soon after £9,700 and £5,600 was transferred out to a third party I'll call M. And two cash withdrawals were carried out - for £500 and £100 leaving the account with a balance of £8.

TSB received notification from the sending bank that the funds received into Mrs C's account were fraudulent. They contacted Mrs C via email and text message to ask why she received the funds. But Mrs C didn't reply. So TSB decided to close Mrs C's cash account, return the remaining funds and load a negative fraud marker on her record.

In July 2022 TSB informed Mrs C's they were closing her spend and save account. Mrs C complained to TSB about the closure informing them that she couldn't receive her pension or benefits as she doesn't have a UK account and had to borrow money off friends and family.

But TSB looked into her complaint and thought they'd acted fairly, so Mrs C brought her complaint to our service.

On coming to our service Mrs C explained that she believes her contact details, phone number and email address, were changed by a fraudster who gained access to her TSB account and carried out the fraudulent activity.

One of our Investigators looked into Mrs C's complaint but they didn't think TSB acted unfairly in closing her account or recording a negative fraud marker against her.

TSB accepted but Mrs C didn't. She repeated that her contact details were changed by a fraudster and she didn't think this had been considered.

On reviewing Mrs C's case I shared my initial thoughts with her. I reached the same outcome as our Investigator but I expanded on the reasoning. I outlined that I hadn't seen any evidence that Mrs C's contact details were changed *after* her cash account was opened in February 2022, and I couldn't fairly conclude that Mrs C didn't have access to the account in April 2022 and most likely was complicit in receiving the fraudulent funds.

Mrs C didn't agree with my assessment. She raised several points, including her contact details were changed without her consent, she doesn't know M and she wouldn't have spent two years raising this if she carried out the fraudulent activity.

TSB provided our service with more evidence showing Mrs C's contact details were last changed on the opening of the cash account in February 2022. On sharing this with Mrs C, she explained that she *didn't* open the account. But hadn't mentioned this before as she thought it was a savings pot and part of her spend and save account.

On sharing this with TSB, they agreed to remove the marker. TSB advised that they couldn't conclusively prove that Mrs C *did* open the account. They said this as neither the IP addresses or devices used for the cash accounts internet banking matched the previous activity on the spend and save account nor were the contact details they'd used to check the fraudulent payment the same.

I shared this with Mrs C, and advised that I wasn't planning to direct TSB to pay any compensation. I explained that although TSB were agreeing to now remove the marker I couldn't conclude their actions in loading it in the first place were unfair.

But, Mrs C didn't agree. In summary Mrs C said:

- She didn't receive proper communication from TSB
- It's negatively impacted her mental health, access to her pension and benefits
- Are TSB going to avoid loading incorrect markers in future?

As Mrs C didn't agree I've proceeded to issue my decision.

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 firstly considered whether TSB acted fairly in closing both accounts with immediate notice. I've reviewed the terms and conditions of the accounts, within these TSB are entitled to close an account with immediate effect for a specified number of reasons. Having reviewed these, I'm satisfied they applied the terms fairly here.

I've moved on to consider the negative fraud marker loaded against Mrs C. TSB have now agreed to remove the fraud marker. But, I still need to consider whether or not TSB acted fairly when loading the marker in the first instance.

I realise this will disappoint Mrs C but from the evidence I've seen I can't fairly conclude TSB acted unfairly here. The first test TSB need to pass when loading a negative fraud marker is whether fraudulent funds were received into the account - from the evidence I've seen, a fraud report from the sending bank, I'm satisfied this is the case. However fraudulent funds on its own aren't enough - they also need to conclude, on balance, that their consumer was *complicit* in receiving the funds.

Mrs C didn't raise with either TSB or our service that she hadn't opened the cash account until January 2025. I've seen a letter sent by TSB to Mrs C in February 2022 advising her of the opening of the new account. I've also seen that the cash account was referred to in TSB's final response letter. On neither of these occasions did Mrs C advise TSB that she didn't open the cash account. Until Mrs C advised TSB of this I'm satisfied it was reasonable for TSB to conclude that Mrs C opened the account.

From the evidence I've seen I think it was fair for TSB to initially decide that Mrs C was *complicit* in receiving the funds. I say this because:

- TSB attempted to contact Mrs C prior to loading the marker via text message and email. Mrs C's contact details were changed on opening the cash account in February 2022. But as Mrs C didn't dispute this until much later TSB had no reason to suspect these details weren't correct.
- The majority of the fraudulent funds were transferred out to M. M was set up on 25 February 2022 when a £30 payment was made. This payment wasn't disputed by Mrs C at the time. I think it was reasonable for TSB to initially conclude that Mrs C authorised this payment – and set up M as a new payee.
- Between 25 February 2022 and the closing of the cash account only one device was used to log into Mrs C's online account. This device was used to carry out the £30 payment and the transfer of fraudulent funds to M.
- £600 of the fraudulent funds were withdrawn via two cash withdrawals. These withdrawals took place within a five mile radius of Mrs C's home address.

On raising a complaint with TSB Mrs C argued that she'd experienced an account takeover. However, based on what I've outlined above, I can't say that the evidence supported this. It follows, I'm satisfied TSB acted fairly in initially loading the fraud marker against Mrs C.

I realise this will disappoint Mrs C but for the reasons I've outlined above I won't be asking TSB to do anything further here.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 March 2025.

Jeff Burch
Ombudsman