

complaint

Mr G has complained TSB Bank plc placed a CIFAS marker against his name. This has meant he can't open another bank account.

background

Mr G had a number of disputes about his account in July and August 2016.

He firstly didn't recognise some payments to a gambling website. TSB explained these had all been authorised by him. They could tell by matching the transactions to his IP address. He also disputed a large payment he made for himself and a group of friends to use a service overseas which he didn't get. TSB tried to chargeback this payment. This was rejected. Mr G and his party had turned up too late to use the service so forfeited the cost. Then there were payments made using his debit card made to another gambling website. These amounted to £6,235. These transactions were made just after Mr G transferred money from his account.

TSB closed Mr G's accounts and placed a CIFAS marker, categorising this as first party fraud. Mr G brought his complaint initially to the ombudsman service in 2016 but didn't pursue this. He came back to us when he realised the CIFAS marker would remain against his name for six years.

Our adjudicator reviewed the evidence. She didn't think TSB had done anything wrong. She also clarified that TSB hadn't placed the marker because of his chargeback claim against the service supplier. Mr G had seen the entry which stated "*chargeback*" on his record which he didn't think was fair.

Mr G wasn't happy with this outcome. He's asked an ombudsman to consider his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached a different conclusion to our adjudicator. I've explained my thinking to TSB already but will detail this again.

There are a few different threads to this but I'm concentrating on whether TSB were right in placing a CIFAS marker against Mr G's name. I'll cover the other issues briefly first.

first gambling transactions

I've considered the evidence TSB provided to us. I've got no reason to doubt there were previous transactions made by Mr G to this supplier. But he was concerned about the name that was showing these payments being made to. Gambling companies often operate under a number of different brands. So it's quite likely Mr G was querying these payments as he didn't necessarily recognise that was the name he was making payments to at that time. There's certainly no evidence to show Mr G continued to believe these were fraudulent.

chargeback for overseas service

It's clear from Mr G's evidence he had a dispute with the supplier. He didn't get the service he'd paid, for himself and a group of friends. This was a great deal of money. Mr G accepts

they turned up late and were barred from getting what he felt they'd paid for. After complaining to TSB, they carried out the chargeback. This was successfully defended. The supplier's argument was Mr G and his friends were late. They were responsible for breaking the terms of the contract. Both parties have confirmed a similar story. I'm not surprised TSB didn't think it was worth taking this further. I don't think it's likely taking this chargeback claim to the next level – what's called adjudication – would have resulted in any success for Mr G.

gambling transactions in August 2016

From the evidence Mr G has shared I can see Mr G queried these transactions with the gambling company. This was after TSB confirmed who the payments had been made to and they were made with Mr G's debit card. Mr G said he didn't recognise the gambling company and hadn't made them. Their response to his emails shows they reversed the transactions and cancelled the account (which had been set up in Mr G's name). We asked them if they could confirm why they'd done this. They no longer held any information about this. So I think it's fair to rely on the evidence Mr G supplied.

I've also considered TSB's evidence. TSB has confirmed Mr G remained logged on to his online banking account throughout the time these debit card transactions were being made. They no longer have the detailed audit log which would show this though. But I have seen evidence from the time which indicates this is more than likely the case. Mr G hasn't denied he was using his accounts and transferred money earlier that evening. However that doesn't mean Mr G was making the gambling transactions.

What do we know about the gambling transactions? Mr G said he didn't have a pre-existing relationship with this company (although he had used other gambling sites belonging to that gambling group – or where the payments were processed by them). The transactions were certainly made using Mr G's debit card. There was an account set up in Mr G's name. There's no evidence to show the IP address used for making these transactions. I've also seen nothing to show any additional security checks were carried out by the gambling company on the debit card. This could have involved an address check. Or a check that the person making the transactions had the genuine card in front of them (rather than just knowing the card number and expiry date).

The gambling company – from the email exchange I've seen – accept Mr G didn't make these transactions and refunded them pretty promptly. They closed the account that had been set up. I don't think they'd have been so quick to refund these transactions if they believed Mr G had made them, or had evidence to show this.

TSB has felt it was possible these payments may only have been placed on a gambling account, rather than used for gambling at that time. That's why they were refunded so quickly. I agree that's possible but that isn't the only explanation.

TSB has wondered how someone else could have known it was only at this moment there was enough money in the right account to pay for more than £6,235 worth of gambling transactions. This is a valid point. I don't know the answer. It's possible Mr G had mentioned he was transferring the money. He was after all transferring his savings for his forthcoming wedding.

Overall taking all the evidence into consideration I don't think TSB has shown Mr G made these transactions. This is relevant because of what TSB did after these transactions.

CIFAS marker

In August – within a few days of the latter set of disputed gambling transactions – TSB registered a marker against Mr G's name on the industry fraud avoidance database. When Mr G first noticed this he felt this was as a result of the chargeback claim he'd made a few weeks before. But I don't believe this is the case. I don't think there's any dispute what this relates to. TSB registered this within days of what they saw as Mr G fraudulently reclaiming money after gambling. As these transactions were made by debit card, any refund may have been dealt with by chargeback. As it is we know the gambling company refunded the money without any action being taken by TSB.

In my discussions with TSB about whether they'd acted fairly, I highlighted what CIFAS's own best practice guide says. Any filing with CIFAS should be for confirmed cases of fraud, "*more than mere suspicion*". TSB told us they'd given Mr G the benefit of the doubt in 2014 when they suspected him of receiving fraudulently-obtained funds. This money had been recovered. I don't think TSB were relying on this in the decision they were now making but it couldn't help but add to their suspicion.

I've already shown I don't think TSB has shown Mr G made the disputed transactions. Therefore I don't believe it would be fair to place a CIFAS marker on his account.

TSB feels Mr G was willing to accept the marker when he thought it would only be registered against him for a year. They've argued they placed it there in good faith. I've certainly considered this. Mr G has argued this marker has prevented him from getting new financial products as well as impacting his reputation. I've also considered these aspects in deciding what's fair.

Overall TSB must remove the fraud marker from Mr G's records. I think that will be a fair resolution.

my final decision

For the reasons I've given, my final decision is to instruct TSB Bank plc to remove the fraud marker against Mr G's name.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 August 2018.

Sandra Quinn
ombudsman