

## **complaint**

Mr K complains that TSB Bank plc (TSB) has closed his account and registered a Credit Industry Fraud Avoidance Scheme (CIFAS) marker against his credit file.

## **background**

I issued my provisional decision on 27 October 2017, a copy of which is attached and forms part of this final decision. In my provisional decision, I explained why I wasn't intending to uphold Mr K's complaint. I invited all parties to let me have any further submissions before I reached a final decision. TSB sent in further call recordings but they'd already been sent to our service by TSB before. Mr K received the provisional decision and, in summary, he says he's unhappy as he feels that the decision has been based on lies that TSB have given to our service about previous claims he made.

## **my findings**

I've considered what Mr K has said alongside all the available evidence and arguments already submitted to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusions as set out in my provisional decision and for the same reasons.

As I explained in my provisional decision, I think the previous claims made by Mr K didn't directly lead to the CIFAS marker being registered by TSB. I've thought about what Mr K has said but I continue to think they were, reasonably, a consideration for TSB when it made its decision to register a CIFAS marker. However, this is the only area where I've mentioned the previous fraud claims made by Mr K in my decision.

## **my final decision**

My final decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 December 2017.

Rebecca Ellis  
**ombudsman**

### **extract provisional decision dated 27 October 2017**

#### ***background***

*what Mr K told our service*

*On 2 June, Mr K said he made two payments using the app on his phone for £150 each. The next day, he says he called TSB to say that he'd made the second payment to one of his friends but he'd accidentally used the wrong account details. The call handler he spoke to told him he had to be put through to the fraud department to report this. Mr K said that he got into a heated argument with the call handler because he said it wasn't fraud.*

*Subsequently, TSB decided to close his account due to a breakdown in the relationship. Mr K was worried about the effect the closure would have on the payments he was going to receive and payments he needed to make. He's also concerned about the effect this is having on his credit file.*

*how did TSB respond?*

*TSB says Mr K originally contacted it on 3 June to say that he'd been the victim of fraud. He told TSB that he'd been in a taxi when he made the first transfer of £150 at around 7pm to an account he has with a different bank. But he realised after the taxi journey that he'd left his phone in the taxi. He contacted the taxi firm and said the driver posted his phone back through his door a short time later. However, it was at this point that he noticed a second transfer for £150 had been made from his account. This transfer was to a person he didn't recognise with the name of 'D'. So he called TSB shortly after midnight on 3 June and told this to the call handler who explained to him he'd need to call the fraud department once it opened later that morning.*

*TSB investigated the matter and declined Mr K's claim. It explains this was mainly because it Mr K's version of events was inconsistent during various phone calls he had with the bank. At points claiming he was a victim of fraud and then saying that he'd made the payment on his mobile banking app but to the wrong account.*

*TSB also reviewed Mr K's account and closed it with immediate effect. It told Mr K this during a phone call and also sent him a letter confirming this. TSB also registered a CIFAS marker to Mr K's credit file because it felt that Mr K had knowingly raised a false claim of fraud. The CIFAS marker says,*

*'First Party Fraud – opening an account or other facility for a fraudulent purpose, or the fraudulent misuse of an account or facility'.*

*TSB looked into Mr K's complaint that he was unhappy with what it'd done but it didn't agree. So Mr K brought his complaint to our service.*

*Mr K's complaint to our service*

*Mr K told our service:*

- He was due receive money and pay bills and is struggling to open an account elsewhere.*
- He can sort of remember what happened and feels very embarrassed about it.*
- He has mental health problems and he takes a number of medications to manage this. Mr K has sent documents supporting this to our service. But, at the time of reporting this incident to TSB, his condition wasn't stable. And, because he wasn't on his medication on that day, he was confused about where his money went. But, once he started taking his medication again, he realised what had happened and told TSB.*

*But he's also told our service that he didn't wanted to be passed to fraud during the first phone calls with TSB as he'd realised he'd input the wrong digits.*

*Our adjudicator upheld Mr K's complaint in part. She thought it was fair for TSB to close Mr K's account but asked it to remove any adverse information it recorded about him. She said this because when he raised the claim, he wasn't taking his medication. In these circumstances, she didn't feel it was surprising that his story wasn't consistent.*

*TSB didn't agree with our adjudicator's recommendation saying it has a duty to accurately record adverse data and other warnings on a consumers credit file. It also explains there could be serious implications for TSB if the same thing happened again and it was discovered that TSB had removed the CIFAS warning inappropriately. Finally, it says it was also a factor that Mr K raised several fraud claims with it on previous occasions.*

*The matter has now been passed to me for a decision.*

### **my provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence. Having done so, I've provisionally decided that I don't uphold Mr K's complaint against TSB. I set out my reasons for this below.*

#### **Mr K's initial contact with TSB**

*There's a dispute between the parties about what happened when Mr K first contacted TSB to report this matter to it. However, I've been given recordings of 17 phone calls Mr K had with the bank between 3 – 8 June. This includes the first phone call he had with the bank shortly after midnight on 3 June.*

*During this call, Mr K tells the bank that he'd been in a taxi when he made the first transfer and had obviously left his phone unlocked and mobile banking app open which allowed someone to send money to 'D'. But he also tells the call handler that someone obviously knows his codes. The call handler gave him the number for internet banking fraud and explained that he'd need to call back once it opened later that morning to investigate whether it'd get his money back.*

*I think it's clear from listening to this call that Mr K intends to make a fraud claim. He doesn't mention the possibility that he might've made the transfer using incorrect account details. The call handler doesn't force or persuade him to talk to the fraud department. Instead, she explains to him what he'll need to do to raise a fraud claim..*

*Later that day, at around 9am, Mr K calls TSB back. He explains broadly the same version of events that he described in his first phone call with TSB. He says his phone was out of his possession for roughly 5 minutes either side of the transaction. Again, there's no mention that he might've made the transfer himself using incorrect account details. Mr K is then transferred to the fraud department. I don't have the recording of the phone call with the fraud department but I have seen the banks notes. They say that Mr K was told the matter would be sent to complex fraud for investigation and internet banking would be suspended during this time. Mr K declined this and said he'd go to the police.*

*Again, I think it's clear from listening to this call that Mr K intended to make a fraud claim. He doesn't mention the possibility that he might've made the transfer using incorrect account details. And the call handler doesn't force or persuade him to talk to the fraud department.*

*At 10.30am, Mr K calls TSB again. During this call he suggests that he might've transferred the money to the wrong account details. The call handler says they'll raise an indemnity claim and that the money will be refunded to him in the meantime. At around 5pm, Mr K calls TSB to find out where his refund is for the indemnity claim. The call handler explains this will take some time and it'll be looked at on the next working day.*

*On the Monday, Mr K phones TSB again to ask where his refund is. He explains for the first time (on the call recordings I have) that he thought someone had used his phone as it was missing but actually he now thinks it must've been him.*

*I won't describe all of the calls I've listened to but I think this sample demonstrate that Mr K's version of events was inconsistent. And that, at the very beginning, he did make a clear claim of fraud that someone had used his phone to transfer money out of his account and that his phone wasn't with him at the time of the disputed transaction. So I don't think Mr K was forced to speak to the fraud department. And I think it was reasonable for TSB to start a fraud claim.*

#### **previous fraud claims with TSB**

*TSB says that Mr K has only had his account since mid-2015. But that he's made a number of fraud claims with TSB in this time. I've reviewed the contact notes on Mr K's file. Although this didn't directly lead to the CIFAS marker registered by TSB, I think this will have been a consideration. And I think this is reasonable as Mr K has made quite a high number of fraud claims in the relatively short time he's had his account.*

*TSB adding a CIFAS marker to Mr K's credit file*

*TSB added a CIFAS marker on Mr K's record because it felt it had enough evidence to do this. From what I've seen and listened to, I think TSB reasonably concluded this was a false claim. And I don't think it was unreasonable for TSB to follow the normal process to record information when it believes a customer has made a false claim. So I don't think TSB acted unfairly in applying the CIFAS marker that it did.*

*I've noted what Mr K has said about his mental health problems. I've thought about whether this means that TSB acted unfairly or unreasonably in registering a CIFAS marker against his record. But I don't think it does. TSB wasn't aware of Mr K's condition. But, even it had been, TSB still has a duty to record information accurately on an individual's credit file. I don't think that Mr K's condition prevents him from having warnings registered against him, as long as they are, in themselves, fairly applied. And, as I've already said above, I don't think TSB acted unfairly in applying the CIFAS marker that it did.*

*Taking everything I've said into account, I don't intend to ask TSB to remove the CIFAS marker it's applied against Mr K. But I think it's worth reminding Mr K that this is a provisional decision, so he can still send us any comments or evidence he thinks is relevant.*

*TSB's closure of Mr K's account*

*Our adjudicator has already set out why she thought it was fair for TSB to close Mr K's account. And I agree with this. So there's very little I can add to what the adjudicator has already said.*

*A bank can decide who it wishes to do business with, and this is a commercial judgement on its part – so it's not something that this service usually gets involved with. The terms and conditions of Mr K's account allow TSB to close the account immediately in certain circumstances. Taking into account what I've said out above, I don't think the bank did anything wrong when it decided to close his bank account.*

*I understand Mr K has struggled to open another account but, as I think TSB applied its terms fairly, I can't require it to re-open his account with it.*

*summary*

*For the reasons explained, I'm not currently recommending that TSB needs to do anything. I know this will come as a disappointment to Mr K but I hope he'll understand the reasons for this which I've explained above. It might be useful to mention that Mr K can add a notice of correction to his credit file to explain the circumstances if he wants to do this.*

### **my provisional decision**

*Subject to any further evidence or information that Mr K or TSB Bank plc might give to us by 10 November 2017, my provisional decision is that I don't uphold this complaint against TSB Bank plc.*

**Rebecca Ellis**  
**ombudsman**