

## **The complaint**

Mr Z complains that TSB Bank Plc registered a marker at CIFAS, the national fraud database after it closed his account.

## **What happened**

Mr Z opened an account with TSB on 30 November 2022. His new card and PIN were sent to him on 1 December 2022. Mr Z says he did not receive these, and that he went abroad on 9 December 2022, not returning until 16 January 2023.

On 27 December 2022 a payment of £674 was made into Mr Z's account from an account belonging to a third party, who I'll call X. These funds were then withdrawn over the next few days in a series of cash machine withdrawals. There were also some card payments carried out at retailers. These payments left Mr Z's account £96.63 overdrawn, with no arranged overdraft facility.

On 30 December 2022 TSB received an indemnity from X's bank stating that X had been defrauded and the payment should not have been made to Mr Z's account. On 4 January 2023 TSB emailed Mr Z to ask him to prove that he was entitled to the £674 he had received from X. Mr Z was still abroad and asked for more time to respond. TSB was not willing to extend the deadline for his response.

When Mr Z returned to the UK he explained to TSB that he had no involvement in any of the transactions on his account, he did not recognise the payment in or the payments out. Mr Z suggested that his card and PIN may have been intercepted and used by a fraudster.

TSB did not think there was a clear way Mr Z's account could have been compromised. It held him liable for the transactions out of the account (and so for the overdrawn balance) and, as he could not show that he was entitled to the funds that had been paid in by X, it recorded a marker against Mr Z with CIFAS for 'mis-use of facility' and closed his account.

Since the marker was recorded Mr Z has received notification from other institutions he banks with that they are also closing his accounts. Mr Z wants the CIFAS marker removed as he says he is an innocent victim here and was not involved in the fraud on his account.

One of our Investigators looked into Mr Z's complaint. They considered that TSB had acted reasonably in recording the CIFAS marker, in holding Mr Z liable for the transactions out of his account, and in closing Mr Z's account.

Mr Z didn't agree, he maintains that he was unaware of the activity on his account and that he never received the card or PIN which he feels must have been stolen by a third party.

I issued a provisional decision on this case on 1 June 2023, explaining why I felt Mr Z's complaint should be upheld. Mr Z largely agreed with my findings, but felt that TSB should pay more compensation than the amount recommended and also provide a written statement saying he had not committed any fraud here.

TSB disagreed with my findings, after considering the police reports Mr Z had provided it has agreed that it will remove the CIFAS marker, but TSB does not consider that any compensation is warranted or that it acted incorrectly in holding Mr Z liable for the outstanding balance of the account, or in initially loading the CIFAS marker given the information it had at the time.

### **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 my provisional decision I explained the following:

*“There are three issues that I need to consider here. Specifically, was it fair for TSB to:*

- *close Mr Z's account?*
- *hold Mr Z liable for the outstanding balance of the account?*
- *record a CIFAS marker against Mr Z?*

*Regarding the first of these points, TSB is – in line with its terms and conditions – entitled to close an account. Mr Z did not ever use this account himself, so now that it has been closed, I won't be asking TSB to reopen it. If Mr Z wishes to apply for an account again then he is free to do so, but TSB is also entitled to decide if it wishes to offer him banking services.*

*Turning to the fraud itself, there are two issues to consider – did Mr Z knowingly receive fraudulent funds into his account, and did he then authorise the payments out of his account.*

*Mr Z has said that he had no knowledge of the funds that were received into his account, he had only recently opened this account – he says this was to take advantage of the switching bonus TSB was offering – and had not received his card or PIN so had not yet begun to use the account.*

*TSB says that when it asked Mr Z to prove his entitlement to the funds he'd received he was unable to do so, but Mr Z has never claimed he was entitled to these funds. His argument is that a fraudster intercepted his card and PIN and then used the account to perpetrate a fraud against a third party. Mr Z denies all involvement in this.*

*I need to consider whether, in light of this, the report to CIFAS was made fairly. On this point, TSB needs to have more than a suspicion or concern. It must be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. And will also need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.*

*I've thought carefully about what Mr Z has said here, and while the report that the payment he received was fraudulent is clearly grounds for suspicion I don't consider that the high bar for a CIFAS marker has been reached. Mr Z has been consistent in his explanation of what happened here – that a third party was able to get hold of the card and PIN while he was overseas and then use his account without his knowledge.*

*I note that when TSB initially contacted Mr Z he did ask for more time before he could provide a full response regarding his entitlement to the funds, but Mr Z has now explained to*

*us that as he had used the account switching service he wasn't sure if any funds had yet been paid into this account (and did not yet have online access to check the transactions) so as he was overseas at the time he wanted to wait until he could properly review the account transactions before making any statement about his entitlement. Once he was back in the UK and able to visit a branch to see the account history he was able to confirm that he was not aware of any of the transactions on the account. Mr Z has never claimed that he was entitled to these funds.*

*And when it comes to the payments out of the account, Mr Z has provided evidence that he was out of the country from 9 December 2022 until 16 January 2023, and the withdrawals were made at ATMs in the UK during that period. Mr Z has also explained that his porch was not secure and that a third party could have accessed it and taken post he'd received. TSB has confirmed the card and PIN for Mr Z's new account were sent on the same day, so they likely would have been received at Mr Z's property at the same time also.*

*TSB has said it cannot see how Mr Z's account could have been compromised, but I consider that a point of compromise has been identified. And Mr Z's comments regarding this issue do appear to have been clear and consistent.*

*With all this in mind I don't consider it was fair for TSB to have either recorded the CIFAS marker against Mr Z or to have held him responsible for the outstanding balance of the account – which was made up of payments which happened while Mr Z was overseas and which I'm not satisfied he authorised or allowed to be made.*

*So I am currently intending to uphold this complaint and to tell TSB to remove the CIFAS marker, remove any adverse information regarding this account from Mr Z's credit file, and to pay him £300 for the distress and inconvenience caused here."*

In its initial response to my provisional decision, TSB raised several concerns it had about Mr Z's explanation of events. Specifically, it noted:

- Mr Z ultimately said he was not entitled to the funds paid into his account, TSB questioned why Mr Z requested an extended deadline to confirm his entitlement to these funds.
- Mr Z did not report that he had not received the debit card until a month after the account had been opened.
- There had been inconsistencies in the timeline Mr Z gave TSB for when he was out of the country.
- TSB had not been given any evidence that what had happened had been reported to the police.

We forwarded the police reports Mr Z had sent to us to TSB, it then confirmed that on the basis of the police reports it would agree to remove the CIFAS record. However, TSB maintained that it had been reasonable for it to hold Mr Z liable for the balance of the account, and to initially load the CIFAS record, as it had not been given these police reports at an earlier stage.

Regarding the points detailed in TSB's initial response to my provisional decision, I don't agree that any of these points are a cause for concern. I'm satisfied that a reasonable explanation has been given for why Mr Z requested an extended deadline. And it seems clear that he reported his card as missing when he arrived back in the UK and realised it had not been delivered, he would not have known it had not been delivered until that point. I also

don't agree that any minor inconsistency in TSB's record of the timeline Mr Z gave is significant.

Regarding the police reports, these were obtained by Mr Z in February 2023, after he had spoken with TSB. TSB's notes show that Mr Z had said he would go to the police to try and get hold of CCTV. But I've seen nothing to suggest that TSB ever asked Mr Z to provide evidence that he'd reported the matter to the police. And I note that by the time Mr Z contacted TSB to discuss what had happened the CIFAS marker had already been recorded. Given the serious implications of a CIFAS marker, I do think there is an obligation on businesses to ensure that they carry out appropriate investigation to ensure such a marker is warranted. Mr Z would not have known what evidence was required, I think it was down to TSB to ask for the appropriate evidence to support the CIFAS marker.

And for the same reasons as set out above, I also remain of the view that it was not reasonable for TSB to hold Mr Z liable for the transactions made on his account – and therefore for the outstanding balance that is owed.

So having carefully considered the comments TSB has made, I still consider that the CIFAS marker should not have been recorded in January 2023, that Mr Z should not be held liable for the outstanding balance of the account, and that TSB should pay Mr Z compensation for the impact this issue has had on him.

In his response to my provisional decision Mr Z commented that, as well as removing the CIFAS marker, TSB should also write a letter that can be forwarded to third parties confirming that Mr Z did not commit any fraud here. I understand why Mr Z feels this is important, but I don't think it is necessary here. Once the CIFAS marker is removed he will be able to make any applications for new accounts, and if he wishes to show this decision to any third parties to confirm my findings then he is free to do so. I cannot see that a letter from TSB would provide any additional benefit.

Mr Z has also commented on the level of compensation I have recommended, he considers that a much higher award is warranted given the impact on him. I'm grateful that Mr Z took the time to set out his difficult personal circumstances, and the extent of the impact this fraud and the events that followed has had on him. But I must also bear in mind that at least part of the fault here lies with the individuals who committed this fraud. I agree that TSB could have handled things better, and that this will have had an impact on Mr Z, but TSB did not itself carry out the fraud. I acknowledge the impact that the CIFAS marker has had on Mr Z, but I remain satisfied that £300 is appropriate compensation for TSB's failings in the circumstances of this complaint. I know that Mr Z wants any compensation to be a deterrent to TSB making similar errors in future, but it is not our role to punish businesses.

### **Putting things right**

To resolve this complaint TSB should:

- Remove the CIFAS marker it has recorded against Mr Z:
- Remove any adverse information regarding this account from Mr Z's credit file (and if Mr Z has paid the outstanding balance of the account then TSB should refund that amount to him); and
- Pay Mr Z £300 compensation.

**My final decision**

I uphold this complaint. TSB Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 9 August 2023.

Sophie Mitchell  
**Ombudsman**