

The complaint

Miss W and Mr W complain that TSB Bank plc closed their joint account. Miss W wasn't informed of the closure. Mr W's details were registered with CIFAS the UK's fraud alert system. Mr W wants the marker removed, the account reinstated and compensation.

Mr W is representing Miss W.

What happened

Miss W and Mr W had a joint account with TSB.

TSB carried out a review of their account. They asked Mr W to provide information showing proof of entitlement to funds that had been received into the account on 5 September 2022. The funds had been reported as fraudulent by another bank. Mr W provided information to TSB. TSB didn't think the information was sufficient to provide proof of entitlement to the funds.

TSB decided to close the account. They wrote to Mr W informing him of their decision to close the account with immediate effect.

They didn't write to Miss W with this information. Miss W complained to TSB. They investigated and apologised for their mistake.

Mr W was unhappy that the account was closed. He thought the information he had provided was sufficient and it hadn't been looked at properly.

The bank said they were entitled to ask for information in cases of fraud. The information provided by Mr W didn't satisfy them as to his entitlement to the funds that had been paid into his account. TSB added a CIFAS marker against Mr W and closed the account.

Mr W was unhappy with TSB's response, so he complained to our service.

One of our investigators looked into the complaint. She said TSB were entitled to close the account and the conditions for immediate closure had been met. She thought TSB had correctly reported Mr W to the Credit Industry fraud avoidance system (CIFAS). She thought that TSB should have written to Mrs W to let her know that her joint account with Mr W was closing but TSB had apologised for this.

Mr W was unhappy with the view he said he thought he had provided enough information and he wanted the CIFAS marker removed. He thought TSB's reaction was extreme. He said he had been a TSB customer for a long time. He thought TSB hadn't looked at the information correctly. He also said he had a severe condition, and this situation was making things worse.

As there was no agreement the matter has come to me to decide.

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.

Cifas marker

The investigator in their view explained the process a bank must follow in order to register a CIFAS marker. I have summarised the process below.

The marker that TSB have filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr W was guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."*

What this means in practice is that TSB must first be able to show that fraudulent funds have entered Mr W's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr W was *deliberately dishonest* in receiving the fraudulent funds and knew they were, or might be, illegitimate payments.

However, a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate complicity*.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I need to assess whether I think there is sufficient evidence to meet this standard of proof – and therefore, whether TSB acted fairly in loading a CIFAS marker against Mr W.

Looking at the information provided by TSB I'm satisfied that Mr W's account received fraudulent funds on 5 September 2022. I'm therefore satisfied that TSB met the first pillar to load a marker.

But this isn't sufficient on its own for TSB to load a marker, I need to be satisfied Mr W was complicit in the fraud, so in summary was *deliberately dishonest* and knew the funds were fraudulent. So, I've moved on to consider this. I note that TSB asked Mr W to provide proof of entitlement to the funds received in the account.

I think it's more likely than not Mr W was complicit in the transaction. I say this because:

- TSB carried out a review of Mr W's joint account. Mr W was asked to provide proof of entitlement to the funds that had been paid into his account on 5 September 2022. Mr W provided a receipt for the transfer and some information regarding the payment having been received from abroad. He said this made it very difficult to get a statement.
- Mr W hasn't been able to explain why the funds were received into his account or

what the funds were payments for. Mr W told our service they were payments from family, but he wasn't able to give further explanation. In addition, if it was payment from family, I can't see how these payments would be reported as fraudulent to the bank.

- The funds were received into the account on 5 September 2022, and they were withdrawn from the account by way of a money transfer on 6 September 2022. The account balance was reduced to a minimal amount. This is the pattern I'd expect to see if fraudulent funds were deposited/transferred into an account.
- The funds were paid into the account in three payments and withdrawn out in three payments. This is the pattern I would expect from someone who knew the funds were fraudulent.

Because of the reasons outlined I think it's more likely than not that Mr W knew the funds received into his account were fraudulent. Taking all of this together, I'm satisfied TSB had sufficient evidence for the CIFAS marker to be recorded on his file. It follows I won't be asking them to remove it.

Closure of the account

As the investigator explained it's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a good reason to do so, this service won't usually say that a bank must keep a customer or require it to compensate a customer who has had their account closed.

TSB has relied on the terms of the account to close it. TSB can close an account with immediate effect in certain circumstances. I have reviewed the terms of the account and the evidence, and I am satisfied that TSB closed the accounts in line with the account terms. And acted fairly in doing so.

I can see that TSB wrote to Mr W on 21 September 2022 letting him know the account was closing with immediate effect. So, I'm satisfied he was aware. As the account was closed fairly, I won't be asking TSB to reopen it.

Notice to close letter

Miss W didn't receive a letter from TSB informing her that the account was closing. Miss W complained to TSB, and I have seen their final response. TSB apologised for the error. I have considered whether Miss W suffered a detriment because of this, and I don't think she has. I say this because Mr W seems to be the main user of the account. I can't see that any wages, benefits or bills were paid into or from the account. Mr W could have told Miss W that the account was closing with immediate effect. I therefore consider an apology sufficient, and I won't be asking TSB to do anything else here.

I appreciate that Mr W will be disappointed with my decision. I accept that this has been a stressful time for him and I'm very sorry that it's made his condition worse. Having looked at all the evidence I'm satisfied that TSB haven't been unfair when they asked him for information regarding the proof of entitlement to the funds, when they closed his account or loaded a CIFAS marker. It follows I won't be asking them to do anything here.

My final decision

For the reasons stated above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W and Mr W to accept or reject my decision before 20 December 2023.

Esperanza Fuentes
Ombudsman