

## The complaint

Mr A complains that TSB Bank plc wouldn't remove a marker about him at CIFAS.

## What happened

Mr A explains that he found out that the marker had been added after his account was closed. This has prevented him opening an account elsewhere. He didn't know that the money sent to his account in December 2020 had been fraudulently obtained and wants the marker to be removed.

TSB said it hadn't made a mistake and wouldn't be removing the marker. It said that his account was closed as he hadn't provided proof of entitlement for the money sent to him. TSB maintained that it had correctly applied the CIFAS marker.

Our adjudicator didn't recommend that the complaint be upheld. Mr A had said that he was in contact with someone on social media. He agreed to receive money into his TSB account and then convert this to crypto currency. Mr A said he had been assured the money had come from their personal investments and they would share 30% of the profits with him. He said he may have used a small amount of his own money but didn't consider this to be an investment. So, she wasn't clear how he expected to profit to such an extent. Mr A said that the person on social media had blocked him and that he then realised what had really happened.

Our adjudicator said that the money was quickly transferred out to another account in his name. There was nothing to show that Mr A didn't ultimately receive these funds. Mr A said he had been in contact then with TSB about his account being blocked. But TSB said that it didn't receive any response to its attempts to contact Mr A by phone and letter about his account. She thought he would have responded if he had been the victim here. She appreciated the time that had since past, and that Mr A said he didn't have any evidence to support what happened. She thought it more likely that not that he had been complicit in what happened. And that it was reasonable for TSB to close his account and add the marker.

Mr A didn't agree and wanted his complaint to be reviewed. He said that he didn't benefit from what happened. He is unable to retrieve any messages as the sender had blocked their online account. Mr A said he didn't receive any letters or calls from TSB. He emphasised the stress that this had caused him. And he mentioned that a different financial business had removed the marker in similar circumstances.

## 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 won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I need to consider whether the report to CIFAS was made fairly. On this point, TSB Bank needs to have more than a suspicion or concern. It has to show it had reasonable grounds to

believe that a fraud or financial crime had been committed or attempted. The evidence must be clear, relevant and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will 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. This can include allowing someone else to use their account in order to receive an illegitimate payment. But 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've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr A was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I'm satisfied that payments made into Mr A's account at this time were reported as being fraudulently obtained. And I've seen a copy of a letter TSB wrote to Mr A about this and a case note saying it had tried to call him.

So, while I appreciate the time that has passed I think Mr A did have the opportunity to provide any evidence he had at the time. And it seems from what he says that he realised his account had been blocked and he says he didn't receive any share of the funds. It's not impossible that Mr A was contacted on social media in the way he says. But I don't see how he could reasonably expect to make such a return himself. And why his bank account would need to be used. The amounts involved were well over £10,000 and were all sent on quickly to convert to crypto currency and there is no evidence that the money was received by anyone else. He was in control of what happened to this money. I'm only looking at what happened here and not what another financial business may have done. Having balanced what he's said and the evidence I find it most likely he was complicit in what happened and not an unwitting participant.

TSB says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So, I've looked at whether TSB was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events, I'm satisfied that TSB had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr A received fraudulent funds into his account and didn't report this to TSB at the time.
- He authorised the transfer of the funds and so was in control of who had the benefit of this money.

- TSB had grounds to believe that Mr A had used fraudulently obtained funds based on the evidence it had.

Having made that finding I consider it was reasonable for TSB to close his account in line with its terms and conditions. I understand what Mr A says about the impact of the marker for him, but I'm afraid I don't have a reasonable basis to require TSB to do anything more.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 November 2023.

Michael Crewe  
**Ombudsman**