

## The complaint

Mr M complains that TSB Bank plc has recorded a fraud marker against him with CIFAS, a national fraud prevention agency.

## What happened

In mid-2022, Mr M was told that one of the accounts he held with another bank was being closed. And while complaining about the closure of that account, he found out that TSB had recorded a marker against him with CIFAS. Mr M then complained to TSB about the marker it had recorded.

TSB investigated but said it was confident it hadn't made a mistake and that the marker had been correctly recorded as Mr M had misused his account. Mr M wasn't satisfied with TSB's response, so referred a complaint to our service.

I sent Mr M and TSB a provisional decision on 25 January 2024, setting out why I wasn't intending to uphold the complaint. An extract from my provisional decision is set out below:

*“TSB says it initially recorded fraud markers against Mr M in relation to both a personal account and a business account he holds with it. Since the complaint has been with our service, TSB says it has removed the fraud marker relating to the activity on Mr M's personal account. So I haven't considered this marker further and have focused on the marker relating to the activity on his business account – which TSB hasn't removed.*

### *The CIFAS marker*

*CIFAS is a fraud prevention agency. It keeps a database of information in order to protect financial businesses and their customers against fraud. And businesses who are members of CIFAS can record information about their customers on the database, and view information recorded by other businesses.*

*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 M is 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 M's account, whether they are retained or pass through the account. Secondly, it will need to have strong evidence to show that Mr M 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 his account in order to receive an illegitimate payment.*

*But a marker should not 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.*

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

*Did fraudulent funds enter Mr M's account?*

*Based on the information and evidence TSB has sent us, I'm satisfied that a number of payments made into Mr M's business account between late 2020 and early 2021 were fraudulent.*

*I'm therefore satisfied TSB has shown that this first part of test for applying the fraud marker has been met.*

*Was Mr M deliberately dishonest in receiving the payments?*

*Mr M has told us he didn't open this business account and wasn't aware of it, or any of the activity on it. He's said he met someone in a pub a few months before the account was opened and, as he often struggles dealing with banks, this person offered to help him with his bank accounts. Mr M says the person had access to his personal information and identity documents, would check his mail for him and had a key to his house – so they could have opened and operated the account without him knowing.*

*TSB hasn't been able to send us evidence of how the business account was opened. But from looking at the statements for both the business account and the personal account in Mr M's name, I can see there are a number of transfers between the two accounts – with the funds often removed from the account they were sent to soon after the transfer. So I think this suggests both the personal account and the business account were operated by the same person, or at least by people who were in frequent contact with each other.*

*And TSB has been able to send us evidence of the opening of the personal account, which shows the application was put on hold until someone came into branch with identity documents and proof of address. TSB has sent us a copy of the passport it was shown when someone came into branch, which appears to be Mr M's genuine passport. It's also said a member of branch staff would have compared the photo on the passport to the person presenting it – which I think it is reasonable to assume did happen. When speaking to us, Mr M has also accepted that he did go into branch with his passport to open the personal account. So I think it's likely Mr M knew the personal account had been opened.*

*While Mr M has said he wanted the personal account to be opened, he hasn't accepted that any of the transactions that were carried out on the account since it was opened were done by him. And he hasn't given us any explanation for what he understood was happening with the account after it was opened. But I think it's reasonable to expect someone who had just opened an account they wanted to then either have some knowledge of what was happening with that account or to be concerned that they didn't know what was happening with the account. And as Mr M hasn't been able to explain what he thought was happening with the personal account and doesn't appear to have reported any concerns about it in between it being opened and him finding out about the fraud marker, I think it's reasonable to assume that he was at least partly aware of the activity on it.*

*As I explained above, I think the person operating the business account was likely the same person, or was in frequent contact with the person, who was operating the personal account. And so as I think Mr M was aware of the activity on the personal account, I think it's therefore likely he was also aware of the activity on the business account.*

*I appreciate that Mr M has said the person he met in the pub and who was helping him with his bank accounts could have operated the accounts without him knowing. But he hasn't been able to give us much detail about this person or his interaction with them, such as their name, the dates they were helping him or copies of any communication with them. So I don't think there's enough evidence of this person's activities to say Mr M wasn't aware of the activity on the accounts.*

*The fraudulent payments received into the business account were all immediately transferred out to a variety of other accounts and the balance of the account was reduced to a minimal amount – apart from where it was maintained by the funds from a cheque which was ultimately returned unpaid. And this is the pattern I'd expect to see if fraudulent funds were paid into an account and then moved on by someone who knew the funds were fraudulent. So I think this suggests the person operating the business account knew the funds received into it were fraudulent.*

*Taking all of this into account, I therefore think it's likely Mr M knew about the activity on the business account, and that the person operating the business account knew the activity on it was fraudulent. So I think the evidence suggests Mr M did act deliberately dishonestly in receiving the payments into the business account, and so TSB has shown that this second part of the test for applying the fraud marker has also been met.*

*I'm therefore satisfied TSB had sufficient evidence for the fraud marker to be recorded against Mr M, and so I don't think it should be required to remove it.*

#### *Mr M's circumstances*

*Mr M has told us about a number of medical conditions he has, which significantly affect his mobility and his interactions with other people. He's explained he often struggles reading correspondence and expressing himself, and that his interaction with banks is often strained. And I want to reassure Mr M that I've thought carefully about everything he's told us about his circumstances and taken it into account when assessing his complaint.*

*My intention isn't to diminish the difficulties his conditions cause him and I don't underestimate the impact they have on him. But, taking this all into account, I don't think TSB has treated him unfairly or that any adjustments we might expect TSB to make in light of his circumstances would affect the recording of this fraud marker. So I still don't think TSB should be required to remove the marker."*

I said I'd consider anything further Mr M and TSB sent in, provided it was received by the deadline given.

#### **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.

TSB didn't respond to the provisional decision. Mr M responded, both by email and over the phone, making a number of points which I will address below.

I want to assure Mr M that I have read and considered everything he sent us, including listening to the phone calls he had with our investigator since the provisional decision. I may not comment on every point he made, as I have focused my findings on the issues I think are most relevant to the outcome of this complaint, but I have considered everything he sent and told us in coming to this decision.

Mr M again said he didn't open the business account, wasn't aware of any of the transactions on it, didn't know the name of the business associated with the account and didn't ever speak to TSB about it. He questioned what evidence there was that he was involved with the business account and how our service could prove he made the transactions.

And I appreciate that there is no direct evidence of his involvement with the business account, and that it is difficult for him to provide proof that he was not involved with something. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is most likely to have happened, based on the evidence I do have.

As I explained in my provisional decision, I think the evidence here suggests that the person operating the business account was either the same person operating the personal account or was in frequent contact with the person operating the personal account. And as Mr M accepts that he opened the personal account and I think the evidence suggests he was at least partly aware of the activity on it, I think it's likely he was therefore also aware of the activity on the business account.

Mr M also said he needed someone else to be present when he went to the bank to open the personal account, to help him and to avoid aggravating his mental health issues. He said he didn't read the postal correspondence he was sent and left it unopened because he found it strenuous to read and needed help to deal with correspondence. And as I said in the provisional decision, my intention isn't to diminish the difficulties his conditions cause him. I understand they have a significant impact on his interactions with banks and how he communicates with them and manages his accounts.

But I still think it's reasonable to expect someone who had just opened an account to then either have some knowledge of what was happening with that account or to be concerned that they didn't know what was happening with the account. And as Mr M still hasn't offered us any explanation of what he thought was happening with the personal account and doesn't appear to have reported any concerns about it in between it being opened and him finding out about the fraud marker, I still think it's reasonable to assume that he was at least partly aware of the activity on it.

Mr M also said he thought he had given our service the name of the person who helped him open the personal account, and who he thinks carried out the activity behind his back. He said we stopped him giving us the person's name, and has now given us their name. And I apologise to Mr M if he had previously given us the person's name, or was stopped from doing so and felt that this was then held against him in my provisional decision. But even though he has now given us the person's name, he still hasn't given us much other detail about them or his interaction with them, such as the dates they were helping him or copies of any communication with them. So I still don't think there's enough evidence of this person's activities to say Mr M wasn't aware of the activity on the accounts.

I understand that Mr M felt the provisional decision wasn't empathetic or sympathetic towards him, and I acknowledge that my decision will come as a disappointment to him. But, for the reasons set out above, I still think the conclusions I set out in the provisional decision are correct. I still think TSB had sufficient evidence for the fraud marker to be recorded against him, and so I don't think it should be required to remove it.

## **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 April 2024.

Alan Millward  
**Ombudsman**