

The complaint

Mr S complains that TSB Bank plc closed his account and recorded a marker at CIFAS, the national fraud database.

What happened

Mr S said his account was closed in October 2016 and no explanation was provided. He has had difficulty obtaining a bank account since. And it was only in 2020 that he found out about the fraud marker.

TSB said it wouldn't be removing the marker. Mr S had made pay at pump transactions in which only £1 was pre-authorised from his account. But when the full amounts had been applied to his account this had resulted in an unauthorised overdraft. It said that this was a specific type of fraud and so had a basis to apply the marker when it closed his account.

Our investigator recommended that the complaint be upheld. He said that the bar for adding a CIFAS marker was a high one. He reviewed the payments on Mr S' account. A first payment for £40 of this type has resulted in an unauthorised overdraft in September 2016. But this had been cleared by his wages. He had made two further such payments totalling just over £100 on 7 October 2016. And these resulted again in an unauthorised overdraft. His account was closed by TSB before he had the opportunity to repay this amount. He didn't think that this activity was sufficient for the marker to be added.

He said that as Mr S had been unsuccessful in since applying for accounts other than those where he said he had to pay a fee this might reasonably have come to his attention sooner. And he could have asked for more information about why his applications had been rejected. Mr S hadn't been able to substantiate a financial loss and so he recommended a payment for distress and the inconvenience caused of £300. TSB agreed to this. Our investigator agreed to put Mr S' request for a higher award to TSB and asked whether it would pay £500 to reflect the impact. It didn't agree to do so and said that this was excessive, and it noted he hadn't brought what he said were the effects of the marker to its attention when he complained.

Mr S, who is represented in this complaint, didn't agree. This compensation didn't reflect the detriment to him and how he has suffered as a result of the marker. He isn't confident that TSB have removed any reference to this and was looking into this further. He has a fee free account now but isn't happy with it. He wasn't able to provide information about the charges on past accounts. He said that because of the marker he couldn't get a car or van, and this meant he had to make longer journeys and affected the job he could take. He worked abroad for a period. He had to work around the impact of the marker. Mr S wanted a payment of £100 for each month the marker had been recorded. His representative said that he might otherwise take this matter to court.

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 need to consider whether the report to CIFAS was made fairly. On this point, TSB 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 and that the evidence would support this being reported to the authorities.

It is a matter for TSB to arrange how to process and pre-authorise pay at pump transactions like these. It has explained that its records show that Mr S had carried out a balance enquiry on his account before the payments. And so, it says he reasonably knew that there wasn't sufficient money to cover these payments when they were presented and that there would be an overdraft that hadn't been agreed to. I think as this had happened in this way the previous month that Mr S was reasonably aware of what he was doing. But there is nothing that indicates to me that he wouldn't have looked to pay this back and with any charges that would have been applicable for such an overdraft. As our investigator says he didn't have the opportunity to do so.

I can see why TSB decided to close his account. But I don't think here there were grounds to think that a crime had been attempted or committed such that there was a basis for a marker. TSB has agreed to remove the marker and I think that was appropriate and proportionate here. It has told this service that it hasn't reported this on any other external fraud databases, and I rely on this assurance in my assessment.

I agree with our investigator that Mr S did have the opportunity to find out earlier why he wasn't able to get the type of replacement account elsewhere he wanted and given the wider effects he describes. He refers to having instead to have paid fees for his accounts, but he hasn't been able to show these charges. He has also referred to the impact on him being able to obtain a vehicle and rent a property. And that he needed to work abroad. I haven't seen evidence that there was a specific loss due to the marker and as I say that he oughtn't reasonably to have found out earlier. So, I don't find there was a financial loss caused.

In my judgement the amount recommended for the inconvenience and the distress caused to him is reasonable. I appreciate he will be disappointed by this and if he doesn't agree with my decision then he is free to pursue this matter in court subject to any relevant time limits.

My final decision

My decision is that I uphold this complaint and I require TSB Bank plc to:

- 1) Remove this CIFAS marker as it has already agreed to do which will mean that there will be no externally reported fraud marker in relation to these payments and Mr S' former account at TSB.
- 2) Pay Mr S £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 August 2021.

Michael Crewe
Ombudsman