

## **The complaint**

Mr S complains that TSB Bank PLC (TSB) unfairly registered a fraud marker against his name. To put things right, he wants TSB to remove the marker and pay him compensation.

## **What happened**

On 13 April 2017, TSB applied a fraud marker against Mr S's name with CIFAS, the Credit Industry Fraud Avoidance System. It had concerns with the way Mr S was using his account.

Mr S only became aware of the marker in 2020, after he tried, unsuccessfully, to apply for credit with other banks. He complained to TSB, but TSB said it was satisfied the marker had been applied correctly. So, Mr S brought his complaint to our service.

Our investigator asked TSB to provide evidence to support its decision to register the CIFAS marker. In response, it provided various system notes alleging fraud on the part of Mr S. But it couldn't provide any evidence to support its concerns, so our investigator thought TSB should remove the marker.

TSB reluctantly accepted our investigator's opinion. Mr S said he wanted to be compensated for the marker being on his file for three years, but he couldn't provide any evidence to demonstrate it had caused him any loss or inconvenience.

Mr S then contacted our investigator again to say TSB had closed his account, and that he wanted to appeal the case and seek compensation. Our investigator explained Mr S would have to raise his complaint about the account closure with TSB separately. But agreed to refer the matter to an ombudsman for a final decision.

## **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 order for TSB to file a 'misuse of facility' marker, it's not required to prove beyond reasonable doubt that Mr S is guilty of a crime. But it must show there are grounds for more than mere suspicion or concern. CIFAS says:

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

Having looked at the notes TSB has provided our service, I understand why it had concerns about Mr S's use of his account. But in order to register a CIFAS marker in these circumstances, it must be able to produce sufficient evidence to show Mr S was deliberately complicit in fraud.

Our investigator sought evidence to support TSB's actions, but it wasn't able to produce any due to the passage of time. And the notes I've seen don't demonstrate much more than a mere suspicion of wrongdoing. So, I can't reasonably say it was entitled to register the CIFAS marker.

Mr S told our investigator that he first assumed he wasn't able to obtain credit because of his poor credit history and that he didn't find out about his CIFAS marker until later. Our investigator asked Mr S to provide evidence to demonstrate the CIFAS marker had caused him to be rejected for credit, but Mr S wasn't able to do so.

I've thought about Mr C's situation and what damage the CIFAS marker caused him. When banks lend money, they consider various factors before accepting a customer's application. One of those factors is the customer's credit history. Given Mr S accepts his credit score wasn't good, it's hard to say with any degree of certainty whether Mr S was declined credit because of his credit rating, or because of the CIFAS marker.

Further, Mr S hasn't been able to provide any evidence to demonstrate he was rejected for credit because of the CIFAS marker. So, on balance, I can't reasonably say Mr S has suffered any loss as a result of the CIFAS marker. I appreciate he's upset that TSB have closed his account, but Mr S will need to raise that as a separate complaint, so I won't consider whether TSB was right to do so, or whether it should pay any compensation as a result, in this decision.

### **My final decision**

For the reasons set out above, my final decision is that TSB should remove the CIFAS marker, if it has not already done so, but I won't ask it to pay Mr S compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 September 2021.

Alex Brooke-Smith  
**Ombudsman**