

## **The complaint**

Mr M complains that TSB Bank plc registered a marker at national fraud databases including CIFAS and is holding him responsible for payments he didn't make.

## **What happened**

Mr M says he wanted to apply for an account with TSB in April 2019. When he did so he didn't receive a card or PIN or use any account. He found out that any account that had been opened was closed. And he was unhappy to discover in 2020 that there was a CIFAS marker and that TSB held him responsible for account activity.

TSB told him that it wouldn't be removing the marker. It said in its final responses that it had received a number of applications from Mr M in April 2019. These had used his correct information and details were sent to his home address. An account in his name was misused and this led to both accounts in his name being closed. It said it had grounds to apply the CIFAS marker and it didn't have to tell Mr M about this.

Our investigator recommended that the complaint be upheld. The CIFAS marker should be removed and Mr M shouldn't be held liable for any payments from these accounts. Mr M said he had applied for an account on 3 April 2019 and registered for online banking. He had never received a card or PIN. He explained that he then lived in a building with a communal entrance and pigeon holes for each flat. He received an email on 23 April 2019 saying that his online banking had been cancelled. Mr M said he assumed there was a problem and had made a further application on 24 April 2019 again linking his account to online banking. He called TSB on 1 May 2019 saying that the account he could see on online banking couldn't be his as there were transactions on it he hadn't made.

TSB explained that the CIFAS marker related to the misuse of the first account. A small deposit had been made and payments made using 'pay at pump'. This meant that only £1 was pre authorised each time but the subsequent payments due resulted in an unplanned overdraft – a specific type of fraud.

Our investigator believed it plausible that Mr M hadn't received the card or PIN as he'd told TSB at the time. And that his further application on 24 April 2019 was a genuine one thinking that his first bank account wasn't operating. There wasn't sufficient information to support the CIFAS marker. He didn't consider that Mr M should be held responsible for the payments and that any information on his credit file about these should be removed.

TSB said it agreed to remove the CIFAS marker. But it thought it unlikely that someone other than Mr M could have known about the application and intercepted the card and PIN which had been sent separately. That person would have had to deposit cash and then made payments for fuel totalling over £270 and this was a number of days after the account had been opened. The disputed transactions were pay at pump ones which didn't show up on his account immediately and weren't dealt with until after it had been closed. It was unclear why Mr M hadn't reported his card as not received until his call of 1 May 2019. Mr M had also been inconsistent and at one point had suggested in his complaint correspondence that he hadn't opened the accounts. It said that it would hold Mr M liable for these payments. It

hadn't removed the marker at first as the issue about the disputed balance hadn't been resolved. But it has made arrangements to do so now.

Mr M also provided more information and comments. This included information from his mobile phone which he said showed that he was at work during the day the card was misused. And details of the two deposits of £5 and £10 to the account that day which were made within minutes of each other at branches 20 miles apart. He said that at no time was he told he was liable for any payments and nor had he been provided with evidence about them. He wanted compensation for the distress he and his family had been caused which included the loss of his account at a different bank and his lack of access to credit facilities with a fear that other banking arrangements would be withdrawn.

### *my provisional decision*

I issued a provisional decision on 24 September 2021. I set out below what I said.

I explained I would be taking into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr M wouldn't generally be responsible for them. If I were to find that these were authorised I also would need to consider whether the report to CIFAS about them 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 isn't in dispute that Mr M applied for the account from which the disputed payments were made. I was satisfied from the audit log provided by TSB that the payments were authenticated using his card details for this account. The issue I needed to decide it whether he consented to and so authorised the payments.

I thought that the recording of the call which Mr M had with TSB on 1 May 2019 was of assistance in considering this. He called to say he has registered with online banking but that the account showing isn't the one he had applied for. He is told that the account he had applied for most recently had been closed on 29 April 2019. There is a discussion about the account showing and he says he never had a card for this one and thought it hadn't been opened as a result. The member of staff tells him that this account has been closed too and he was sent a letter about that on 23 April 2019. He is told that there is a credit balance on that account of just under £10 and he says that it isn't his money and he doesn't recognise the entries on the account. He ends by saying it is possible he has opened two accounts accidentally thinking that the other wasn't open.

He has since provided this service with an email from TSB dated 23 April 2019 stating that his internet banking has been cancelled. And he's clarified that this is the reason why he applied for a further account on 24 April 2019. I'd also seen evidence that at the time the first account was closed there was a credit balance. I was still unclear why the disputed payments for fuel aren't shown given that the account was closed on 1 May 2019. But I accepted that the only information available about that account to both Mr M and the person he spoke to on 1 May 2019 was about the credit balance. And this is a reasonable explanation for why he didn't do anything further to dispute those payments at that time.

The information he has received as part of a SAR request shows that the CIFAS marker was added on 23 April 2019 in respect of his first account. Any further comments about this being due to multiple applications weren't correct although it seems did influence the review of the marker when Mr M complained.

I thought that there has been room for genuine confusion on the part of Mr M about what happened. And this explains why the further issues about the consequences of those disputed payments didn't come up until the time when he intended to make a mortgage application in 2020 and had issues with his account at a different financial business. I didn't agree that Mr M had therefore attempted to misrepresent what happened in his correspondence. A year had passed since his call and I thought he had a genuine concern about his identity having been misused. That in itself came following a letter from TSB referring to there having been multiple applications in his name and an inference he drew that the CIFAS marker related to a subsequent account.

I found it unlikely that Mr M would have applied for an account again had he been aware of the actual payments on the first account. And that this would otherwise not have come up as an issue when he spoke to TSB on 1 May 2019. I thought his responses then were straightforward and no attempt was ever made to ask him to account for him not using the card and making the payments. Seemingly the issue wasn't dealt with because there was thought to be a credit balance on the account.

Mr M explained that he had switched a previous account from TSB in February 2019 to get an incentive elsewhere. He explains he didn't chase a card and assumed there was a problem when he received the response from online banking. Had he carried out the disputed payments I thought him applying for a further account was unlikely as was him calling about this. There is a reasonable explanation for why the card and PIN may have been intercepted taking into account the wider circumstances here.

The further information he has provided about the credits to his account supports this. One credit was made at 16:02 on 10 April 2019 for £5 and another at 16:04 for £10 which were at branches a distance away. Pay at pump transactions - meaning that £1 was authorised from the account - were made at 16:52 and 16:57 that day and a third at 13:20 the following day. There were other small payments that Mr M had seen on his account leading to an available balance of £9.95 before the pay at pump debits were made. These were the payments that he could see during his call with TSB.

#### *putting things right*

I found it most likely that he didn't make these disputed payments. That being the case there is no basis at all for a CIFAS marker and TSB has agreed to remove this. I made clear that Mr M has also referred to other markers that he says were added at the same time in error on different third-party databases relating to his accounts. TSB hasn't made any comments to explain those to Mr M and I accepted that any fraud marker shown on another system shouldn't have been registered either. These seem to have been removed. I couldn't distinguish the effects of any other markers from the CIFAS marker and said I am considering the overall position here.

I considered that Mr M shouldn't be held responsible for the disputed payments and any adverse information should be removed from his credit record about these accounts.

I needed to think about compensation which I could only award for the impact on Mr M the complainant here. Financial businesses must make their own checks when considering whether to provide financial products. And a marker shouldn't lead to automatic refusal. I don't have details of any specific mortgage application Mr M made and nor could I say that but for the marker he could have had other financial products. He also says he was able to move but to a smaller property than he wanted. Having said that I took into account the time that the marker has been in place, the clear distress and inconvenience caused to him and the confusing information he has been provided with. We don't make punitive awards and I had taken account of published guidance about compensation and considered a payment of

£300 is appropriate. I appreciated this may be less than he wants but it was fair in the circumstances here.

### **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 responded to my provisional decision to say that there were no adverse credit markers it could see relating to these payments. It said that the CIFAS marker had already been removed. It didn't make any specific comments about my proposal for compensation or about whether it agreed or accepted my conclusions about the payments.

Mr M made further comments and included evidence. He referred to several places where I'd not properly referred to TSB in my provisional decision which I've already adjusted for above. He accepted my conclusions about the markers and the disputed payments.

Mr M said that he thought that the impact of the marker had been underrepresented. He said that he appreciated that he hadn't sent details of this before. He provided a copy of a mortgage illustration and evidence he borrowed money from family at a higher rate of interest to allow them to move. He said he needed to go to TSB four times to obtain information and covered 133 miles with costs of £100. And he said that TSB should have provided this information to him in the first place. He hadn't received cashback on his account with a different bank. While he understood that his bank needed to make its own judgement once it saw that the CIFAS marker was removed it had reinstated his accounts. There was clear distress and inconvenience to him and his family. Had TSB provided clear information then this wouldn't have been caused. And this would also have been the position if it had done a proper investigation when he called on 1 May 2019.

Mr M said he had been given different information about when the petrol transactions were done. There was an incorrect explanation for why the markers were in place. TSB misrepresented what happened in the call of 1 May 2019. And it had claimed incorrectly that it hadn't placed a marker on other national fraud databases and one of which had given a different reason that he had paid in a false instrument. TSB had removed these markers in November 2020 but not the CIFAS one. He was never provided with evidence about the transactions. He said he was unhappy with the way his complaint had been handled by TSB and it hadn't explained things correctly or properly.

I have considered this further information carefully. I think Mr M has now had a reasonable opportunity to make a claim for financial loss.

He's explained that the mortgage which seemed to be taken out only in the name of his partner had a fixed interest rate for 2 years of 1.18% per annum. And that they both in the end borrowed £65,000 from family documented at an interest rate of 1.5% per annum. He wants the difference in the rate applied to the £65,000. I don't have information to show exactly what was drawn on the mortgage and to confirm that this was reduced solely due to the impact of the CIFAS marker. Or to find that a higher amount at the same rate could otherwise have been borrowed. But even if I did I need to take into account that there were arrangement fees and a product fee for the mortgage noted that are relevant to a fair comparison of relative costs. And that there was a voluntary arrangement he came to with a family member. So, I'm not persuaded that it is reasonable to require TSB to pay him the £416 he wants.

Mr M hasn't shown the amount of cashback he says he lost through not having his bank account. And I remain of the view that it was a matter for this bank to decide how to assess

the CIFAS marker.

I understand what he says about complaint handling. TSB did provide a final response to the initial complaint on 7 April 2020. Mr M referred his complaint to this service. And TSB responded to him further about the other fraud markers on 28 October 2020 and then told Mr M that it wouldn't have anything to add.

I'm taking into account what I think both about the CIFAS and other markers and the disputed payments in my assessment of the merits. And by noting as I've explained on what our investigator had said in his initial view and his attempts to reach a mediation with TSB before the complaint was referred for an ombudsman's decision. So, I assess how the fact that the matter wasn't resolved earlier impacted on Mr M when deciding how to put things right. I wouldn't necessarily have expected TSB to say or provide more to Mr M after he referred his complaint. This service was then investigating things.

I need to decide on the appropriate level of compensation. As I said in my provisional decision we don't make punitive awards and I can only think about the impact on Mr M. We don't tend to make awards for hours spent but think about the overall impact. I note what he says about the additional inconvenience of his contact with TSB over the other fraud markers and the related incorrect information.

Having considered the compensation again I have decided that I didn't fully take into account the impact on him through distress and inconvenience based on what he's now said. Accordingly, I increase the amount of compensation from £300 to £450. I have decided I can make this modest increase for this narrow issue fairly without a further provisional decision because I understand Mr M's position. And because TSB haven't had anything to say about my original compensation award.

I retain the other elements of my resolution as before. I appreciate that Mr M will remain disappointed with this outcome given his recent comments.

### **My final decision**

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

- 1) Remove the CIFAS marker as it has already now done.
- 2) Remove Mr M from any liability for the disputed payments from the account so that he doesn't owe anything.
- 3) Ensure that there is no adverse information reported about the account(s) to credit reference agencies or to any other third parties as it says it already has now done.
- 4) Pay Mr M £450.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 January 2022.

Michael Crewe  
**Ombudsman**