

## **The complaint**

Miss C and Mr E are unhappy that TSB Bank plc (“TSB”) declined their mortgage application then recorded markers against them on a fraud prevention database.

## **What happened**

Miss C and Mr E applied for a mortgage with TSB in February 2020 via a broker which was declined. TSB requested proof of income for both Miss C and Mr E, but after carrying out various checks on their income they couldn’t verify it. So they placed markers on National Hunter.

Miss C and Mr E complained to TSB who responded on 28 May 2020 and said they didn’t make an error. But they let Miss C and Mr E know that if they provided further information in the form of an employment history letter from HMRC for tax years 2018 – 2019 and 2019 - 2020, confirming both incomes, they would review the markers.

Miss C and Mr E provided this information, and TSB removed the markers in July 2020.

Miss C and Mr E have said that as a result of these markers, they were unable to obtain a mortgage with another lender. They would like to be reimbursed for costs they have incurred for application and broker fees as well as for their rental payments due to the fact they had already sold their property.

Miss C and Mr E referred their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators who thought that TSB had sufficient grounds to add the markers based on the information they had at the time the application was made. So she didn’t uphold the complaint.

Miss C and Mr E disagreed with the investigator and in summary, made the following comments:

- If they knew there were markers against them, they would never have made any further applications until they were removed. TSB never informed them they were there and they only found out about them later on. They incurred costs due to the incorrect markers being placed
- Their other mortgage application was declined purely because of the markers. Lenders are using these markers as a red flag to decline applications, so TSB is responsible for this
- They don’t agree with the investigator that a previous application had been declined prior to the one they made with TSB
- The fact that HMRC information was not up to date, does not mean their application was fraudulent. TSB concluded it was and placed the markers on the database

As Miss C and Mr E disagreed with our investigator, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

## **My provisional decision**

I issued a provisional decision on 10 June 2022. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Lenders should only record information on fraud prevention databases where they have reasonable grounds to do so. We would expect them to have clear evidence that they have relied upon before applying any markers. I've looked at what TSB have done in Miss C and Mr E's case, to decide if they acted fairly.

TSB had to assess Miss C and Mr E's income in order to approve the application they made in February 2020. TSB have told us they were unable to verify the income, namely that of Mr E. They said they noted that Mr E had been employed with his current employer since September 2019 but the payslips they were provided with, didn't reflect the income declared on the application in the year to date figure. Having looked at notes that TSB sent us, it seems they were mindful that Mr E may have been on a lower salary in his previous role, so they didn't place the markers on the fraud prevention database at this time, but they requested further information from Miss C and Mr E. TSB asked for three months' payslips and corresponding bank statements showing salary credits and the previous two years' P60s – 2018 and 2019. They also asked for both Miss C and Mr E's P45s and proof of equity deposit.

After TSB reviewed the information provided, they still felt there were discrepancies in the information that had been provided, so they applied the fraud markers on the fraud prevention database.

Miss C and Mr E have since been able to provide the further information that TSB asked for since the markers were applied, and TSB have been able to verify their income, so they removed the markers in July 2020. TSB asked for information for the tax year 2019 – 2020 and this information wouldn't have been available from HMRC until after the tax year had ended in April 2020 which I understand.

However, it's not clear why TSB didn't ask more questions at the time of the application to satisfy their requirements. It seems they relied on their own verification checks and decided that they couldn't verify the income, so they placed the markers against Miss C and Mr E. I don't think this was enough to justify applying the markers.

The discrepancies were mostly surrounding Mr E's income. TSB said they assessed the payslips Mr E provided for November and December 2019, but the November payslip still had discrepancies in the year to date figure.

TSB also said that the corresponding bank statements provided for Mr E showed that payments from his employer didn't match what was on the payslip. TSB also said that for Miss C, there were discrepancies in her year to date figure too that was showing on the payslips.

Having looked at the payslips in question, the bank statements for Mr E do reflect the same amount going in from the employer, which is the same as what is shown on the payslip. The October and November 2019 payslip show credits of £5,636.68 which is the same as what is showing on the bank statement. So it's not clear to me what TSB had concerns about. And the year to date figure was never going to match because Mr E had changed jobs partway through the year.

I think that Miss C and Mr E could've explained their situation and the discrepancies if they had just been asked – but they weren't. And had they have been asked, I think it should have been clearer to TSB why there were in fact discrepancies.

So I don't think it's fair that TSB applied the markers in the first place. So I am intending on upholding this complaint.

Miss C and Mr E have asked for costs to be reimbursed and I've thought carefully about how TSB should put things right for them.

I am intending on directing TSB to pay for any application fees that Miss C and Mr E have incurred, which were not refunded at the time, because of the way the application was handled by TSB.

But I don't think that the broker fees should be refunded. This is because Miss C and Mr E chose to approach a broker to find them a suitable mortgage. And even though TSB mishandled the application, there is never any guarantee of a mortgage being approved and there are a number of other reasons why TSB may have declined the application. So I won't be asking TSB to refund these costs.

With regards to the rental payments that Miss C and Mr E have paid, I don't think that these should be refunded. I understand that their property was sold and they had to rent while things were sorted out, but there was never any guarantee that they would have been able to get a mortgage approved in time before they sold their property. So I won't be asking TSB to do anything more with regards to this.

I am also intending on asking TSB to pay Miss C and Mr E £300 for the trouble and upset they were caused. This situation caused Miss C and Mr E stress and frustration which has had some impact on them.

For completeness, having looked at the information that has been provided, I can't see that Miss C and Mr E did in fact have an application declined prior to applying to TSB. I thought it was best to clarify this as it was something that Mr E was concerned about.

Although I am intending on upholding this complaint, I wanted to clarify the points below.

I understand that Miss C and Mr E are unhappy that TSB didn't inform them that the fraud markers was applied against them. Lenders do not have to notify borrowers if markers have been applied against them. There is no requirement for them to do so. And I do note that Miss C and Mr E said they were declined by another lender after their application was declined by TSB and they feel very strongly that they were only declined because of the marker.

Lenders who use National Hunter shouldn't automatically decline an application just because of a marker. That is set out in their guidance. I understand that Miss C and Mr E feel very strongly about this, because they don't agree that lenders wouldn't act on this information otherwise there would be no point in adding the marker, but the guidance is very clear around this subject. I therefore cannot hold TSB responsible for this. This is the reason why I won't be asking TSB to refund any application fees or broker fees in relation to the other lender.

My provisional decision

For the reasons given above, I am intending on directing TSB Bank Plc to:

- Reimburse any application costs that Miss C and Mr E have incurred in trying to arrange their mortgage with TSB plus 8% simple interest from the date the fees were paid until date of settlement
- Pay Miss C and Mr E £300 for the trouble and upset they were caused

## **Developments**

Miss C and Mr E responded to the provisional decision. They said the compensation wasn't the amount they were hoping for, but it was more important to them that it was acknowledged that there had been an error made.

TSB also responded and they disagreed with what I had said. TSB raised various points as to why they disagreed, based on the investigations they had completed at the time. They didn't think they did anything wrong in recording the fraud markers.

### **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've thought very carefully about the information that TSB have provided us since the provisional decision but what they have said doesn't change my mind. I'll explain why.

TSB have raised various points as to why they applied the fraud markers, but they have accepted that Miss C and Mr E didn't act fraudulently, given that they have taken the markers off. As I already said in my provisional decision, lenders should only record information on fraud prevention databases where they have clear, rigorous evidence of fraud or dishonesty for financial gain. And lenders are entitled to carry out their own checks in order to satisfy their requirements.

I have noted that after making their enquires, TSB wasn't satisfied that the income on both applicants' payslips reflected the amount they had earned for the relevant tax year. As I already mentioned, this was always going to be the case as their employment history had changed. It wasn't until TSB requested employment history letters from HMRC confirming Miss C and Mr E's income, that the fraud markers were removed.

There are various concerns that TSB have raised but I still think they should reasonably have asked further questions at the time the application was made, to understand Miss C's and Mr E's circumstances. They were able to verify their income in July 2020 after obtaining the letters from HMRC so it's evident that there wasn't an issue with the income of Miss C and Mr E. I still believe questions should have been asked at the time in order for TSB to satisfy themselves that what Miss C and Mr E were telling them was in fact correct.

I've noted what TSB have said about Miss C and Mr E's income and the concerns they had, but I don't find that they had clear, rigorous and relevant evidence of dishonesty or fraud. So I don't think they had reasonable grounds to record the markers. Suspicion isn't good enough and like I said, TSB should have asked additional questions of Miss C and Mr E at the time, before applying those markers.

### **My final decision**

For the reasons given above and in my provisional decision, I uphold this complaint and require TSB Bank Plc to:

- Reimburse any application costs that Miss C and Mr E have incurred in trying to arrange their mortgage with TSB plus 8% simple interest from the date the fees were paid until date of settlement

- Pay Miss C and Mr E £300 for the trouble and upset they were caused

If TSB Bank Plc deducts tax from any interest it pays to Miss C and Mr E as above, they should provide Miss C and Mr E with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr E to accept or reject my decision before 8 August 2022.

Maria Drury  
**Ombudsman**