

The complaint

Mr M complains that TSB Bank plc won't agree to remove a marker against his name on a fraud prevention database - CIFAS. TSB added the marker in connection with a mortgage application Mr M made.

What happened

The circumstances of this complaint are well known to both parties, so I won't repeat them again here in detail. Instead I'll summarise the main facts that I consider to be fundamental to the outcome and focus on giving my reasons for my decision.

In 2018 Mr M applied for mortgage with TSB. He used payslips that suggested he was employed by a company earning a regular salary with income tax deducted at source. TSB was concerned about the legitimacy of the payslips because it couldn't verify the income declared on Mr M's payslips following its standard underwriting checks. So, it declined the mortgage and recorded a CIFAS marker against him.

Mr M accepts he used false payslips. He says that the payslips were produced by a broker. He was young and naïve at the time and relied on the negligent advice of the broker to use false payslips during an application to obtain a mortgage.

Mr M says it wasn't his intention to mis-represent his income. He's provided bank statements and a memorandum of agreement, which he says, proves he did earn the amount declared on the payslips - from a joint venture with his father, consisting of various companies including the one shown on the payslips. But while he says he did receive this amount of income, he accepts that he didn't receive it as a salary as indicated on the payslips and therefore that the payslips misrepresented the nature and source of his income at the time.

TSB said it was satisfied the CIFAS marker was correctly applied as Mr M's income couldn't be verified at the time. But, if Mr M could provide full employment history information from HMRC for the period in question, showing that the payslips were genuine, then it would consider his request to remove the marker ahead of the standard six-year reporting period. Mr M couldn't provide this information.

In the absence of such information, TSB didn't agree to remove the marker. Mr M brought his complaint to our service through a legal representative. An investigator looked into things and didn't uphold the complaint. He thought the CIFAS marker had been correctly applied and didn't think TSB should remove it early in the circumstances.

Mr M's representative said whilst Mr M did not disagree with our investigator's findings, he wants TSB to use its discretion to remove the marker early considering his current circumstances. Our investigator considered Mr M's response, but his position remained the same. As an agreement hasn't been reached, the case has been passed to me to decide.

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.

Having done so, I agree with the investigator for broadly the same reasons. I'll explain why.

CIFAS issues principles for its members which set out the standard of proof to be applied in making an entry on the database. The standard to be applied is that TSB should have had clear, relevant and rigorous evidence such that it could confidently report the matter to the authorities should it choose to do so – so the standard is not proof of fraud or a criminal conviction, but reasonable suspicion of fraud.

I'm satisfied Mr M knowingly used false payslips when he applied for the mortgage. Genuine payslips are supplied by an employer, which wasn't the case here. Mr M says he was sent payslips produced by his broker to use during his mortgage application. So, he knew they weren't genuine. So, when considering the CIFAS principles, I'm satisfied it was fair and reasonable for TSB to record the marker. That's because it's clear that the reason Mr M's income couldn't be verified at the time was because he was not receiving the pay he claimed from the company he said was paying him – and so it would have been fair for TSB to conclude there were reasonable grounds to believe he'd deliberately misled it when making the application.

The starting point here is that if a CIFAS marker is justified, it remains on the database for six years. TSB is only expected to remove the marker early if:

- The CIFAS marker was wrongly applied from the outset; or
- New information has come to light, which had it been known sooner, means the CIFAS marker should not have been applied.

TSB was willing to consider removing the marker if Mr M could provide information from HMRC to confirm his historic earnings. The reason for this was to verify whether the payslips provided were genuine, suggesting the marker was incorrectly applied. The lack of relevant information available from HMRC suggests this not to be the case. And, indeed, Mr M accepts that it was not the case. As such I've seen nothing that suggests either of the above criteria has been met. So, TSB is under no obligation to remove the marker early.

Mr M's representative has recently provided a letter from Mr M's solicitor that explains why he was advised not to declare any tax during the period in question. In their opinion this explains why HMRC has returned limited information for that period. I've not placed much weight on this as it has no bearing on whether the payslips used were genuine.

The key consideration here isn't about whether Mr M's earnings were legitimate through other means and/or any tax implications that may apply as result. It's about whether he misled TSB into thinking his income circumstances were of a different nature. Which was the case here and the reason the CIFAS marker was applied.

But while it was fair for TSB to record the marker and there's no obligation to remove it early, I've also thought about whether it would be fair and reasonable in all the circumstances to ask it to remove it. I've borne in mind what Mr M has said about his changed circumstances since the marker was put on, the impact it's continuing to have on him, and that he wants to be able to put this behind him and move on with his life. I'm not unsympathetic to that. The presence of a marker can have serious consequences throughout the time it's on the database. But I also have to bear in mind that there are good reasons why the database exists – including allowing information to be shared across the industry to prevent fraud, which protects both firms and consumers. On balance, I'm not persuaded that the impact the marker is having on Mr M is enough for me to say that TSB ought fairly to remove it early even though it's justified.

For reasons I've explained, I've seen no evidence that verifies the payslips used were genuine or anything that excuses false payslips being used to try and obtain a mortgage. Ultimately if Mr M's income was legitimate, it's unclear why he'd go to lengths of using false payslips. As such I don't think TSB has unfairly applied the CIFAS marker or unfairly exercised its discretion when deciding not to remove the CIFAS marker early.

My final decision

My final decision is that 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 17 November 2022.

Arazu Eid
Ombudsman