

The complaint

Mr R complains that TSB Bank plc (“TSB”) made an entry about him on the CIFAS database in connection with a joint mortgage application.

What happened

Mr R applied for a mortgage with TSB around September 2017, using a broker. He applied for the mortgage with another person that isn’t a party to this complaint. TSB declined the application and left a marker on the CIFAS database. The CIFAS database is a cross-industry fraud prevention database which allows financial services providers to share relevant information, subject to safeguards.

Mr R complained to TSB about the marker in 2021.

TSB said it has limited records about the application due to the passage of time since 2017. But it didn’t think it had done anything wrong, and that it wasn’t prepared to remove the marker. Its records say that when Mr R applied for the mortgage he said he was working for a business I’ll refer to as “H”, earning an annual income of more than £97,000. TSB had some questions regarding the information it had been given, so it asked Mr R for more information. However, TSB had concerns about the information provided, and it wasn’t able to verify Mr R’s income using its standard underwriting checks. So it put the marker on the CIFAS database.

After Mr R had complained to TSB he sent it a copy of a letter (dated May 2020) from his accountant. That letter said that a company Mr R had worked for (I’ll refer to that company as “H1”) had filed information incorrectly with HMRC.

The letter went on to say that the payslips and P60 that Mr R received from H1 didn’t match up payments made into his bank account. However, by the time the mistakes had become clear, the company had ceased trading and the owner had disappeared so the matter had remained unresolved.

Mr R also provided a letter from HMRC dated November 2020. That said Mr R had received £106,705 from another company (that I’ll refer to as “H2”) in the 2017-2018 tax year. It showed Mr R earned a much smaller income from H2 in the previous tax year.

TSB considered the information it had been provided with but declined to remove the marker. It asked for information about Mr R’s employed income from 2012 onwards and evidence from HMRC regarding H1 failing to report information correctly to HMRC. It appears that Mr R didn’t send TSB all that information.

After Mr R complained to the Financial Ombudsman Service our investigator considered all the information that had been provided to her and TSB. That included Mr R’s self-assessment tax records from the 2013-14 tax year onwards and P60 documents. She thought TSB had reasonable grounds to suspect it had received false information in connection with the 2017 mortgage application. So she didn’t recommend that TSB removed the marker.

Mr R remained unhappy and asked for his complaint to be reviewed by an ombudsman, so it has been passed to me to decide. More information was provided to our investigator after she sent Mr R her view on his complaint.

It's clear from Mr R's recent correspondence that he feels that he has been unfairly penalised for mistakes his employer(s) made – mistakes he says he isn't responsible for.

In August 2022 our investigator was sent an letter by someone that said they were Mr R's previous employer – I'll refer to that person as Mr A. In that letter Mr A said the payslips and P60s provided to Mr R were incorrect and were filed with HMRC incorrectly. Mr A said that was his fault – not Mr R's. The letter was stamped by a company with a similar sounding name to H1. It's clear from the letter, and from what Mr R told us, that Mr A sent that letter after Mr R said he would take legal action against Mr A.

Mr R has also provided the Financial Ombudsman Service with a copy of a letter from HMRC dated July 2022. That letter says that Mr R's pay and tax details changed twice in recent years because it hadn't been given accurate information. HMRC said that it initially contacted Mr R's employer, but it still got inconsistent information. So it went on to update its records with information Mr R sent it.

Our investigator sent TSB a copy of the January 2022 HMRC letter, but TSB was still unwilling to remove the marker. She also remained of the view that TSB hadn't made a mistake when it put the marker on the CIFAS database. She said that Mr R had worked for a number of different businesses with similar sounding names from the 2013-14 tax year onwards. However, Mr R's HMRC records didn't match the tax documents Mr R has provided us with. She thought it was unusual that multiple limited companies with different directors all failed to accurately report his income and tax/national insurance contributions to HMRC.

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've come to the same conclusion as our investigator. I'll explain why.

When Mr R applied for the mortgage in 2017 TSB considered the information and evidence it received in connection with mortgage application and carried out underwriting checks to try to confirm the accuracy of what it was told and to decide whether it wanted to lend. I think it's worth saying here that there was no obligation on TSB to lend money to Mr R. It wasn't obliged to give reasons for refusing to do so either.

The standard of proof for putting a marker on the CIFAS database is that there must be clear, relevant and rigorous evidence of fraud, such that TSB could confidently report the matter to the police or other authorities (whether or not it has actually done so).

The standard required is therefore one of reasonable suspicion, not proof. But there must be evidence of fraud. There are various fraud offences, but a common feature is acting dishonestly for financial gain.

Having weighed up all the evidence and arguments here very carefully, I can understand why TSB had concerns about the information it had been given in connection with the application. I can see that when TSB first considered the mortgage application it had concerns, so it went on to carry out a further investigation. It asked Mr R for payslips, bank statements and P60 documents, and considered those documents too. TSB still had

concerns and wasn't able to verify the information Mr R had declared about his income. So it applied the marker on the CIFAS database.

I've looked at the information that was available to TSB around the time of the mortgage application and can understand why TSB acted as it did. Amongst other concerns, TSB wasn't able to verify the information Mr R had declared about his income. It could also see that Mr R had said that he worked for H since the end of 2012. However, correspondence from HMRC showed he worked for H2 from the beginning of 2017. TSB also noted that the director of H2 shared the same surname as Mr R, possibly indicating that he was a member of Mr R's family.

In the circumstances, I don't think TSB's concerns were unreasonable. So, I can't say it made a mistake when it recorded the markers on the CIFAS database.

The next question I need to consider is whether TSB should remove the marker now given the new information that has been provided since the marker was recorded in 2017. There seems to be no dispute now that TSB was sent incorrect information in connection with the 2017 mortgage application. Mr R accepts he made a mistake in his mortgage application when he said that he worked for H since 2012. But he said that was human error, not fraud. Mr R's position is that he wasn't responsible for the incorrect information in the mortgage application. He says his employers made mistakes with the documents it sent him (P60 documents and payslips). He doesn't think it's fair that he should be penalised for that.

I appreciate what Mr R has said and provided in this complaint. However, I'm not persuaded that Mr R's employers were solely responsible for the incorrect information in the 2017 mortgage application. I appreciate that Mr R has provided the Financial Ombudsman Service with a copy of a letter from HMRC dated July 2022 that says that Mr R's pay and tax details changed twice in recent years because it hadn't been given accurate information by Mr R's employer. However, I'm also conscious that Mr R's updated HMRC records don't match the tax documents he provided to the Financial Ombudsman Service.

The information in the 6 January 2022 HMRC letter setting out where Mr R worked in the 2012/2013 to 2017-2018 tax years differs to the information in Mr R's self-assessment forms that he sent to our investigator.

There are also inconsistencies between the amount of money HMRC understands Mr R earned in the tax years stated above (as set out in HMRC documentation dated January 2022 and August 2021) and the amount of money Mr R said he earned in his self-assessment forms.

I can see that the salary Mr R declared to TSB at the time of application differs to the amount shown on the P60 he has provided for the 2017-18 tax year.

Taking all these factors into account I don't think it would be fair and reasonable for me to require TSB to remove the marker from the CIFAS database. I say that because I think that TSB had reasonable grounds to suspect it had received false information in connection with the 2017 mortgage application, and I'm not persuaded that Mr R's employer(s) were solely responsible for the incorrect information.

For completeness I will say here that I'm conscious that Mr R has said that he's waiting for HMRC to send him another letter about his tax position. It's not clear to me what Mr R thinks such a letter will say, or how long it will take HMRC to send such a letter. I'm conscious that Mr R has had a number of years to get his tax records in order - more than two years have gone by since Mr R's accountant wrote a letter in May 2020 to say that incorrect information had been filed with HMRC. So I don't think it would be fair for me to delay making my

decision any longer.

For completeness I will also say that I've considered the letter Mr A sent our investigator in August 2022. The Companies House records show that the company that had stamped the letter was dissolved a number of years before Mr R's 2017 mortgage application. Another person (not Mr A) is listed on Companies House Records as being the director of that company. So the letter doesn't make me think that Mr A was solely responsible for the incorrect information in the 2017 mortgage application.

conclusion

I appreciate what Mr R has told us that the impact of the marker on him and his strength of feeling about this matter. However, I don't think TSB acted unreasonably in recording an entry about him on the CIFAS database. Nor do I think it would be fair and reasonable for me to require TSB to remove the markers now.

I recognise that this decision is likely be disappointing for Mr R. But based on what I've seen, it wouldn't be appropriate for me to require TSB to do anything to resolve this complaint.

My final decision

For the reasons set out above, my final decision is that that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 December 2022.

Laura Forster
Ombudsman