

The complaint

Mr A complains that TSB Bank plc put a marker against his name on a fraud prevention database in connection with a mortgage application.

What happened

Mr A made a mortgage application to TSB. TSB declined the application and, unknown to Mr A, also recorded it on a fraud prevention database. Mr A discovered the marker a few years later when he made another application to a different bank.

Mr A carried out a subject access request with CIFAS, the fraud database. He found that TSB had recorded an entry for “application fraud”, with the reason “false documentation”. He found a similar entry on the National Hunter database.

Mr A complained to TSB, and then brought his complaint to us. He said that he noted that on both the CIFAS and National Hunter entries, TSB had recorded that he said he worked for a company I’ll call S Ltd. That company was recorded on Companies House as having been dissolved in 2013, three years before the mortgage application. Mr A said that was in fact incorrect – he did not work for a limited company at all. He worked for a sole trader using the same name (without the “Ltd” suffix) – so his employer was not S Ltd, but Mr X trading as S (for reasons of anonymisation, I have used initials only in this decision). Mr X had dissolved the company but continued the business as a sole trader. Mr A said that the income information he had included with his application was correct and genuine.

TSB asked Mr A to provide evidence from HMRC setting out his reported employment and tax history from the time of the complaint. Mr A said he wasn’t willing to do that. He said TSB should have made these enquiries at the time of his mortgage application and because it didn’t do so, it couldn’t show that the standard for making a report to the databases was met and he hadn’t been treated fairly. As a result, he said, the markers should be removed and TSB should compensate him for the losses they had caused.

However, when he brought the complaint to us, Mr A did obtain an employment history letter from HMRC. Once our investigator gave TSB a copy of the letter, it agreed to remove the marker.

Mr A said that the marker should never have been applied in the first place. And it had had a significant impact on him – it had led to him being refused credit with other lenders, including mortgages. He’d lost out on the chance of buying a family home and investment property. And the presence of the marker has impacted his ability to work in his chosen profession.

Our investigator thought that TSB had acted reasonably in putting the marker on based on what it knew at the time, and that it was fair it had removed it later. She didn’t think TSB needed to take any further action.

Mr A wasn’t happy with that. He didn’t think the marker should have been put on in the first place, and wanted TSB to compensate him for the losses he had suffered. So the case came to me for a decision to be made.

My provisional decision

I issued a provisional decision, in which I said:

When a mortgage application is made, a lender will consider the application and supporting evidence provided, as well as carry out its own checks of what it is told, to help it decide whether to lend. That's what TSB did here.

In certain circumstances, lenders can record the details of applications on fraud prevention databases. The databases perform an important function in allowing information sharing and fraud prevention across the financial services industry. But the consequences for an individual of having a marker against their name can be serious – and so an entry should only be made where it's justified. CIFAS's guidance to its members is that they should only make a record where there's clear relevant and rigorous evidence to justify a reasonable belief that fraud has been committed or attempted such that a report to the police or authorities could be made (though one does not need to be made).

In this case, TSB looked at the evidence Mr A supplied in support of his mortgage application. Its concerns were mainly about his income, and the evidence he provided. TSB was unable to verify his income using its standard underwriting checks. And when it tried to find the employer stated on the payslip, it only found S Ltd, which had been dissolved in 2013, three years before the application.

TSB therefore decided that the standard was met, and it recorded an entry about Mr A on the CIFAS database. It didn't carry out any further investigation, or ask Mr A about the potential discrepancies it had found.

I'm not persuaded that this was fair. CIFAS has issued guidance to its members that a failure to verify income is not of itself enough to justify a marker – it should be a trigger for further investigation, not a trigger for a marker. That's because there can be innocent explanations other than fraud for a failure to verify. And while this specific guidance was given in 2018 – after the marker was applied in this case – it was a restatement of existing principles not new guidance.

The confusion about Mr A's employer was understandable. I haven't given the full name to preserve anonymity. But the "S" in what I have referred to as S Ltd and what I have referred to as Mr X trading as S is identical – other than the inclusion of "Ltd" in S Ltd. So when TSB saw that Mr A's payslips said his employer was S, and tried to verify that such an employer existed, it found S Ltd on Companies House and noted it was dissolved some years earlier. It wouldn't find Mr X trading as S in this way, as there's no equivalent register for sole traders.

So it is understandable that when TSB looked for Mr A's employer, and found S Ltd, it was concerned that he appeared to have provided payslips issued by a defunct company. But this was a misunderstanding, though TSB didn't realise this at the time.

And when it also couldn't verify Mr A's income, that led it to conclude there was sufficient evidence of fraud.

But I'm not persuaded there was sufficient evidence of fraud to justify the marker. I've said there can be innocent explanations for a failure to verify income; these include that the income has started only recently. And I've said that the concerns about the source of Mr A's income were based on a misunderstanding.

Had TSB asked Mr A for further information and evidence, at the time he made his application, to support what he'd said it's likely the misunderstanding about his employer would have come to light and that an explanation of the failure to verify would have been given.

When Mr A complained, TSB asked him for further evidence. Mr A gave us that evidence, we gave it to TSB and TSB agreed to take the marker off. Had it asked Mr A those questions at the time, I think it's more likely than not that the marker would never have been applied.

And I think that, acting fairly and reasonably, TSB ought to have made those further enquiries before deciding to add the marker.

I'm pleased to note that TSB has now removed the marker. But I'm not persuaded adding one was justified at the time. So in addition to removing the marker, I think it's fair and reasonable that TSB compensates Mr A for it having been put on.

Mr A said he's been refused credit with other lenders. And that has caused him loss. However, I don't think I can fairly compensate him for this. Even without the marker, his applications may have been refused – loans and especially mortgages can be refused for many reasons. And any possible lost profit from investment properties is speculative and not something I can quantify even if I was persuaded that but for the marker he would have been given the mortgages.

Mr A also says that the marker has prevented him working in his chosen profession. But again I'm not persuaded he has been caused financial loss. This is not a situation where he was already working in this field and because of the marker lost his job. Rather, some years later, he decided on a career change but hasn't yet been able to take up work because of the marker. So while he's not been able to carry out the work of his choice, he hasn't lost an existing job because of the marker.

However, I do think TSB should compensate him for the upset and inconvenience discovering the marker has caused – including the time spent getting it removed, the disappointment at the delay in taking up his chosen career and the stress and upset that resulted. I think £350 is fair compensation in all the circumstances.

The responses to my provisional decision

TSB accepted my provisional decision.

Mr A responded to say:

- TSB acted in breach of the mortgage regulations. And it didn't comply with the evidential requirements before recording a fraud marker.
- The marker was on his record for six years. That's had a significant impact on him. Lenders he applied to will have taken the marker at face value, and will have assumed he was involved in fraud.
- Mr A said his losses could be quantified:
 - His credit score is excellent, and he has never missed a payment on any debt.
 - Another bank refused him an account because of the marker – it told him that

at the time.

- He believes that but for the misunderstanding, TSB would have approved his mortgage application as he had a good deposit and an excellent credit score. Other lenders refused him a mortgage too – but after TSB had put the marker on. He has lost out on the chance to buy the property he wanted, which has increased in value considerably since.
 - He has also lost the opportunity to buy other property, since several buy to let mortgage applications have also been declined.
 - Despite never having a problem with applications for credit cards before 2016, he has been turned down several times since.
 - In order to try and find out why his applications were being declined, he subscribed to credit reference agencies for two years, as well as paying subject access fees to the fraud databases.
- Mr A also said that the existence of the marker had caused him years of stress and worry. Compensation of £350 is too low and “makes a mockery” of the need to treat customers fairly. Mr A thought £1,500 would be a fairer amount.

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’m pleased to note that TSB accepted my provisional decision that the marker should never have been recorded against Mr A. I therefore see no reason to change my mind about upholding this complaint. Though I make clear I haven’t made a finding that TSB has breached the mortgage regulations – this case is not about that, it’s about whether it was fair for it to conclude that the database’s evidential threshold had been met. The recording of fraud markers is not something covered in the regulator’s mortgage rules, other than as part of the general requirement to treat customers fairly.

Putting things right

That leaves the question of how to put things right. And I’ve taken into account everything Mr A has said about this, and thought about it very carefully.

I do understand his frustration, and I understand why he believes that the presence of the marker is the cause of the problems he described.

However, I don’t think I can safely find that but for the marker Mr A would have been granted the mortgages he’s described. There are many factors to consider in granting a mortgage. And while Mr A had a sizeable deposit and a good credit score, that doesn’t of itself mean any mortgage application would have been granted. There would also need to have been a valuation of the property carried out – a lender will not lend until satisfied the property is good security – and an assessment of Mr A’s personal circumstances and affordability carried out. And even if TSB, or another lender, had offered Mr A a mortgage that still doesn’t mean that the property purchase would inevitably have gone through – there are lots of other things that can affect a property sale.

The same is true of the buy to let mortgages Mr A referred to as well.

I'm afraid that it's not possible for me to say that it's more likely that not that, but for the marker, Mr A would have been granted the mortgages he applied for and would have gone on to buy the properties. And therefore I can't safely find that Mr A has been caused quantifiable financial loss.

Mr A has also referred to credit card applications – and the same is true there. Applications can be refused for many reasons. And in any case I'm not persuaded that a refusal of an application to be allowed to borrow money on a credit card amounts to financial loss.

But I do think it's fair and reasonable that TSB pay Mr A compensation for the upset and distress caused. I've taken into account what he has said about that, and I've also taken into account the sorts of awards the Financial Ombudsman Service has made in similar cases. I remain of the view that £350 represents fair compensation.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct TSB Bank plc to:

- Remove any record of this mortgage application from fraud databases; and
- Pay Mr A £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 December 2022.

Simon Pugh
Ombudsman