

The complaint

Mr S complains that Sainsbury's Bank Plc declined his loan application and had added a marker incorrectly at CIFAS, the national fraud database.

What happened

Sainsbury's Bank said that it hadn't made a mistake. Mr S had applied for a personal loan in December 2020. It had considered what he'd provided, any existing account holding record and data held by credit reference agencies. It said that it couldn't provide specific details for the reason for the decline but that he might want to look at data held by credit reference agencies. Sainsbury's Bank set out how Mr S could obtain a report about information held by CIFAS. And it said that it wouldn't be upholding a complaint about a marker being applied and which it noted Mr S said had affected his mental wellbeing and led to him losing his job.

Our investigator didn't recommend that the complaint be upheld. She said that she didn't think that Sainsbury's Bank had made a mistake and that it should do anything further.

Mr S didn't agree and wanted his complaint to be reviewed. He hadn't been asked to provide any information about the complaint and thought we'd taken the side of Sainsbury's Bank. He had made this application and the marker was wrong. He wanted to know what more information he could give.

My provisional decision

I issued a provisional decision about this complaint on 27 February 2023. I set out below what I said.

First I said that it's a matter for Sainsbury's Bank to decide whether to agree an application for credit. I'd expect it though to follow any process it has fairly. Here I was satisfied it did that and had also recorded that it phoned Mr S to discuss aspects of his application. It doesn't have to explain further why it didn't provide a loan and can set its own criteria and keep these confidential.

I then turned to the CIFAS marker. This service had the impression from what it had been told that the CIFAS marker added by Sainsbury's Bank related to Mr S' application in 2020. But through our investigator I clarified that this wasn't the case and that the marker was added in 2018 when Mr S made a prior loan application to Sainsbury's Bank. So, I asked it to provide the information that supported this marker being added.

I needed to consider whether this was added fairly. On this point, Sainsbury's Bank 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.

The CIFAS marker that was then added is one about application fraud and relates to applications where material falsehoods or false supporting documentation is given in

support of an application. And where the name of the applicant hasn't been identified as false.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the information in order to understand their level of knowledge and intention.

Sainsbury's Bank hadn't then been able to supply me with a copy of the application that Mr S made at the time. So, I couldn't see what information he provided and how he responded to the specific questions he was asked.

Sainsbury's Bank had at the time made internal notes about what it thought were inconsistencies in that application. I'd noted those carefully. But I haven't seen the source evidence that supports any of them and so then compare this to what Mr S said in his application. And Sainsbury's Bank says it wouldn't have taken screenshots of this information at the time. I could see why Sainsbury's Bank believed it had grounds for suspicion and to think that there were material falsehoods. But it hadn't satisfied me both that this was actually the case, and that Mr S deliberately gave it false information with the aim of being better able to obtain finance. Sainsbury's Bank said that no contact was then attempted with Mr S. As I'd referred to it's reasonably required to retain the relevant information from the time during the currency of the marker. It can't for example fairly rely on any more recent information to support its position.

So, I found that the high bar for adding the marker in 2018 hasn't been shown to have been met here. I considered that the marker should be removed.

I appreciated Mr S has said that this had had an effect on him and that until now he's not been given the opportunity to comment on the specifics of what happened. But at this stage I could take into account that as far as other financial businesses are concerned a marker on the database shouldn't lead to automatic refusal of an application and lenders must make their own checks. I didn't have evidence to support any other impact. And Mr S hasn't yet provided or commented on a complete record of any entries about him at CIFAS over the period and about his wider credit record if for example he wanted to say that this marker *alone* would have resulted in any detriment to him. And as Sainsbury's Bank did with his most recent application here other lenders may have indicated why any particular facility was turned down or given him cause for concern. Mr S had the opportunity to follow up any particular declined application and so discover what was recorded on his credit record sooner.

Having said all that I accepted that he would be distressed by the marker, and I noted the time it's been in place and what he's done to try and remove this. So, I intended to award him £400 in compensation to reflect this.

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.

Mr S said that this was a big relief and that he accepted the decision.

Sainsbury's Bank didn't agree. It said that it didn't have a copy of his application, but it

provided me with an extract of the 'application data' from its archives. It said that there were material falsehoods described as "*False bank details/Residence - undisclosed address(es)/Undisclosed adverse credit data.*" It referred to CIFAS guidance about proving payment details are false and which I note also states that care must be taken to ensure that genuine mistakes are identified "*i.e. where two digits have been inadvertently transposed*". It said that it made a check with the bank involved and that information about the account didn't match that for Mr S which was enough for the marker. And there had been concerns about an undisclosed address.

I've looked closely at what it's provided. As it's said this isn't a copy of the actual application with the specific questions Mr S was asked. Whilst the meaning of some of the fields is obviously clear – for example the bank account details - others are given under database codes with no explanation. As I said before I don't doubt Sainsbury's Bank had reason to be suspicious about the information in the application at the time. But the issue for me is whether the information now is sufficient to reach the standard of proof for the marker.

I remain of the opinion that it isn't. I say this for a number of reasons. Mr S wasn't asked about any inconsistencies at the time and what were noted as major discrepancies about the bank details he put forward. Given the stage at which this information has been provided in our process (as I explained above) I'm not minded now to ask Mr S about bank account details provided nearly five years ago - or to ask Sainsbury's Bank to clarify things further given the opportunity it's already had. I can't see the specific questions Mr S was asked about his address (and any history). And so, I don't have information that's clear to me from that time supporting that he had deliberately concealed a different address and relevant credit in his name. And I won't fairly be relying on information provided as part of any subsequent application to Sainsbury's Bank or any other financial business to support a past marker or draw inferences about the integrity of what he then provided.

So, in conclusion I will be endorsing my provisional findings for all the reasons I've given, and I consider that the resolution remains fair.

My final decision

My decision is that I uphold this complaint and I require Sainsbury's Bank Plc to:

- 1) Remove the CIFAS marker.
- 2) Pay Mr S £400 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 May 2023.

Michael Crewe
Ombudsman