

The complaint

Mr P complains that TSB Bank PLC (TSB) unfairly registered a Credit Industry Fraud Avoidance Scheme (CIFAS) marker against his name. To put things right, he wants TSB to remove the marker.

What happened

In November 2020, Mr P applied for and was given a Bounce Back Loan (BBL) of £30,000. After the funds credited Mr P's business account on 24 November 2020, Mr P made 3 payments totalling £29,107.50 out via a money transfer service, then made a payment of £700 to another account in his name. All in the space of just 9 days. 6 days later, Mr P made a further payment of £190 to an account in his wife's name, which meant that all but £2.50 of the £30,000 BBL had been spent.

Mr P then applied for a top up to the BBL in the sum of £17,500, which credited his account on 9 December 2020. Aside from the payments I've mentioned, there was no other activity on the account between 24 November 2020 and 2 March 2021, when TSB reclaimed the top up funds.

TSB carried out a review of Mr P's business account and concluded he had applied for the BBL fraudulently. TSB noted that Mr P had initially opened a sole trader business account for a shop that TSB had subsequently closed down after a review. And that Mr P later applied for another sole trader account, for the same nature of business, this time using a different email address and phone number, and listing a different turnover (£100,000 instead of the previous £250,000).

TSB noted Mr P's tax return for the year in question showed a turnover of £15,074 against a declared turnover of £190,000 on the BBL application. And that there was no business activity on the business account. It contacted Mr P to find out more about his business, but he wasn't able to provide any evidence of trading.

He said he had used the BBL funds to buy two commercial vehicles from a foreign country that he intended to sell. But he couldn't produce any evidence to support his claim that he had bought the vehicles, and he told TSB the deal had fallen through and that he no longer had the money.

TSB closed Mr P's account and registered a CIFAS marker against him. Mr P complained, but TSB declined to change its position and issued a final response to Mr P's complaint, saying the marker had been recorded correctly.

Mr P remained unhappy, so he brought his complaint to our service. Our Investigator looked at his complaint, but was satisfied the marker had been recorded correctly so she didn't uphold Mr P's complaint.

She noted that TSB had found Mr P's wife also had a sole trader business account with TSB that operated the same nature of business and had also received a BBL. She said Mr P would need to provide evidence to demonstrate he and his wife were operating different

businesses, but Mr P declined to provide such evidence. He sent in a heavily redacted copy of one of his wife's annual tax returns, but declined to send in full details when asked to.

Our Investigator also told Mr P he would need to provide evidence to demonstrate he had purchased the 2 commercial vehicles, but he wasn't able to do so. He said there was no invoice and he was only able to provide a logbook, that didn't demonstrate he had purchased 2 vehicles.

Ultimately, Mr P didn't accept our Investigator's findings, so he asked for an Ombudsman to review the matter afresh.

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.

Firstly, I should say that I'm aware I've summarised the events of this complaint in less detail than the parties, and that I've done so using my own words. The reason for this is that I've focussed on what I think are the key issues here, which our rules allow me to do.

This approach simply reflects the informal nature of our service as a free alternative to the courts. And I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything both Mr P and TSB have said, before reaching my decision.

When a bank is a member of CIFAS, it can record a marker against a customer when that customer has used their account fraudulently. This type of marker will stay on a customer's record for six years and will usually make it difficult for that customer to take out new financial products.

In order to file such a marker, TSB is not required to prove beyond reasonable doubt that Mr P is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- "There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; and
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."

What this means is that TSB will need strong evidence to show that Mr P applied for the BBL fraudulently: a CIFAS marker shouldn't be registered against a customer who has acted unwittingly – there must be evidence of a deliberate fraudulent action.

Having looked at the evidence TSB has provided, I'm satisfied it has met the above criteria.

TSB has provided our service with evidence in support of its suggestion that Mr P's application was fraudulent. The evidence shows that:

1. Mr P declared an annual turnover of £100,000 when he opened his account, of £190,000 on his BBL application, and that he could only evidence a turnover of £15,074;
2. There was no evidence of a trading business on Mr P's business account statements and Mr P was unable to produce any evidence that he was running a trading business;

3. The BBL funds were all spent within 15 days of crediting Mr P's account. £29,107.50 of which was transferred to a recipient in his home country that Mr P says was to purchase 2 commercial vehicles;
4. Mr P had no evidence to support his claim that he had purchased 2 vehicles with the funds (the vehicles had no connection to his nature of business); and
5. Mr P's account was opened at around the same time as his wife opened a similar business account, with a similar nature of business. His wife also applied for and was given a BBL.

Mr P told our service that he had bought 2 commercial vehicles because he needed to adapt to the new business environment presented by the Coronavirus pandemic. But he didn't produce any evidence to demonstrate he had agreed to buy the vehicles, and he hasn't provided any evidence to show he was operating a trading business at the relevant time, let alone a business with a turnover of £190,000 as he had declared in his application for the BBL.

Mr P was asked to demonstrate that the business his wife had setup was distinct from the business he had setup, but he didn't do so. He provided a heavily redacted tax return, but that didn't demonstrate he and his wife were operating separate businesses.

Mr P hasn't produced a credible explanation to demonstrate the turnover he declared on his BBL application was truthful, and he hasn't produced any credible evidence that demonstrates the BBL funds were spent on legitimate business purposes, or that he was running a legitimate business that would qualify for a BBL.

It follows that I don't uphold this complaint, and that I won't ask TSB to remove the CIFAS marker.

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 P to accept or reject my decision before 19 June 2024.

Alex Brooke-Smith
Ombudsman