

## **complaint**

Mr T complains that TSB Bank plc placed two Credit Industry Fraud Avoidance System (CIFAS) markers against his name. He says this has stopped him from being able to open a bank account. He wants TSB to remove the markers.

## **background**

Prior to October 2015 Mr T made a number of online applications to TSB for current and savings accounts. He made a number of these applications using aliases. After identifying that Mr T had made these applications, TSB closed all of Mr T's accounts with them and added two different CIFAS markers on Mr T's credit file – these were for 'application fraud' and 'misuse of facility'.

Mr T's bank account with another bank was also closed – and on doing so they informed him it was closed because he had a CIFAS marker placed against his name.

In February 2016 Mr T complained to TSB about the markers. He said he was suffering from mental health problems and was distressed and inconvenienced by TSB's actions.

TSB responded saying that they can confirm they've added information to his CIFAS records and they believe they've acted correctly in doing so.

As Mr T didn't agree with TSB's outcome he brought his complaint to our service.

One of our adjudicators investigated Mr T's case and asked TSB further questions about the applications Mr T had made. TSB provided evidence that Mr T had applied for around 20 bank accounts with TSB over the period – and he'd used three different names (with the same date of birth and address) to make these applications. TSB also provided evidence that Mr T had a number of defaults recorded against his name and argued that it's likely he's attempted to avoid his poor credit history by using aliases. Our adjudicator didn't think that TSB had done anything wrong in adding the markers.

Mr T initially accepted our adjudicator's opinion but later came back to our service advising that he'd received further information from CIFAS and he's now aware of why the markers were added – but he still thinks they were added unfairly. He explained that at the time the markers were added he was suffering from deteriorating mental health – and he must have accidentally used his middle rather than forename when making an application for a TSB account online. Mr T provided evidence from his Community Psychiatric Nurse (CPN) explaining that he was suffering from deteriorating mental health in 2015 and this *may have* been a factor in him using different names when making the account applications.

On reviewing Mr T's case our investigator thought that TSB were fair to place the application fraud markers on his credit file but not the marker for misuse of facility – she wasn't satisfied TSB had provided sufficient evidence for this marker to be added.

Neither TSB nor Mr T accepted our investigators opinion.

Mr T said that he's previously been known legally under different names – and he's changed his name on a number of occasions through deed poll. He explained his change in medication had also led him to use his middle name – by mistake – on one occasion but he didn't make any of his applications fraudulently.

TSB responded to say they believe it's appropriate for all of the CIFAS markers to remain – based on the number of different names Mr T has used in his applications.

As neither party agreed it's been passed to me for a decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And in doing so I've come to the same conclusion as the investigator. I'll explain why below.

I've considered the two sets of markers separately in my decision. Firstly I've considered if the misuse of facility marker was added appropriately.

Firstly I'll explain what a business needs to demonstrate when adding a marker to a credit file. CIFAS guidance says the businesses must have carried out checks to a sufficient depth to meet the burden of proof set by CIFAS, which at the time was that TSB needed to have enough information to make a formal complaint to the police or other relevant law enforcement agencies. And that any filing should be for confirmed cases of fraud, rather than mere suspicion. In addition, CIFAS guidance sets out businesses are expected to retain the evidence they rely upon when applying a CIFAS marker for *at least* six years.

Our investigator asked TSB to provide relevant information regarding why they thought it was appropriate to record this marker. As the markers were added in 2015 TSB have explained they don't have the information they relied on at the time. So, when considering CIFAS' guidance – and the need for TSB to retain the evidence for at least six years – I can't see TSB had enough evidence to satisfy the CIFAS burden of proof. And I'll be asking them to remove the misuse of facility marker.

I've moved on to look at whether the application fraud markers were fairly applied.

I've seen evidence from TSB that Mr T applied for a number of different accounts with TSB between 2013 and 2015 in three different names. Mr T has explained that he changed his name on two occasions through deed poll – once to a new legal name and on the second occasion back to his birth name. He's provided evidence of the second deed poll – when he changed his legal name back to his birth name.

TSB argue that Mr T is deliberately attempting to avoid them identifying his defaults when applying for the new accounts. I've considered the legal changes in name in relation to his account applications.

Mr T wasn't able to provide evidence of his change from birth name to his new legal name, but I can see that there was a significant overlap between applications using both names – which even if Mr T could evidence his change in deed poll – concerns me. I'd expect, once Mr T changed his name legally on the two occasions, that he'd make applications using his new legal name – and not use the two names interchangeably for applications. Towards the end of 2015 Mr T also made a number of applications using his middle as his first name – which he doesn't dispute wasn't his legal name at any time. His explanation for this is the change in medication that occurred at the time.

I've thought about the impact of Mr T's medication on him – and the evidence provided – to see if I'm satisfied it more likely than not led to him making incorrect applications.

Mr T's CPN has provided evidence which explains that towards the end of 2015 Mr T suffered deterioration in his mental health. Mr T's CPN says that towards the end of 2015 Mr T found it hard to concentrate which *may well* have been a factor in him completing an application form incorrectly.

I've thought about whether Mr T's change in medication could be the explanation for the change in name on the applications. For me to accept the change in medication led to him using his middle name, I'd have to be satisfied he made the error on four separate TSB account applications. But I don't think it was and I'll explain why.

I find it unlikely that – if as Mr T says he was confused due to the change in medication – his applications to TSB at the end of 2015 were consistent. He applied in only his birth name and his middle name – which Mr T has confirmed he's never been legally known as. He didn't use any other versions of his names or any alternative names – which you might expect if he was confused. Or even more likely I'd expect, if concentration was an issue, for him to get other details wrong. But, on the applications made Mr T consistently got his date of birth and home address correct. Furthermore I've not seen any evidence to show he made any applications where he spelt his birth, legal or new name incorrectly – again indicating the ability to concentrate to a sufficient level.

I've also considered why Mr T may wish to use a different name at this point in time – and I've seen evidence that suggests there is an identifiable motivation for him. When Mr T made the applications under his middle name he had various defaults in his birth and legal names. I've thought whether this was just a coincidence but – as TSB argue – I think it's more likely than not Mr T was applying for accounts with TSB, in this name, to avoid the defaults. And it wasn't, for the reasons I've explained above, a genuine mistake on Mr T's part.

In conclusion I think TSB should remove the misuse of facility marker from Mr T's record but I'm satisfied that TSB had met the burden of proof required by CIFAS to add the markers for application fraud. Although I understand this will be disappointing to Mr T I won't be asking them to remove these.

### **my final decision**

I uphold Mr T's complaint in part:

I direct TSB Bank plc to:

- Remove the misuse of facility marker from Mr T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 September 2019.

Jeff Burch  
**ombudsman**