

## complaint

Mr J complains that when his application for a current account with TSB Bank plc (TSB) was declined an incorrect marker was put on his credit file which has caused him problems. He wants the marker removed.

## background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 9 November 2018 - a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and invited both parties to send any additional comments or evidence they wished to make.

TSB didn't agree with my provisional decision. In summary it said:

- Mr J came off the voter's role at the address he gave as his present address from 2003-2009 and went on the voter's role at the undisclosed address in 2004. So the conclusion that he had lived consecutively for 22 years at his present address was incorrect;
- the defaults that TSB found were within the last three years and this suggested Mr J hadn't lived at the address he provided for the last 22 years;
- it had been told by CIFAS that it had met the burden of proof needed to put the marker on Mr J's file;
- it listed the four steps it said followed in order to correctly record the marker – taken from the CIFAS rules – to prove it had met them all;
- it wanted us to ask Mr J to explain the inconsistencies it had found on his electoral register information.

I confirmed to TSB that I thought its refusal to offer Mr J an account was fair, but I didn't think it had acted reasonably in applying the CIFAS marker. I said that we'd asked Mr J to explain his absences from the voter's role from 2013 onwards and although his answer wasn't as comprehensive as I would have liked, I was persuaded by his explanation and the supporting documentation he'd given us that he answered the questions TSB had asked as honestly as he could. I also shared the evidence Mr J had provided about his address with TSB. I also considered what TSB had said about Mr J's absence from the voter's role from 2004-2009.

TSB then said that the reason it had only asked Mr J about his three years address history was because he disclosed one address which covered all three years so no further information was needed. It asked us to clarify Mr J's connection to the undisclosed address.

TSB also said CIFAS had *confirmed* it had acted correctly by applying the marker. So I asked TSB to provide the evidence that CIFAS had said TSB had acted correctly. But it said this had only been a verbal confirmation.

Mr J provided the address confirmation as requested – which was shared with TSB. And he said he agreed with the provisional decision and didn't submit any further information.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And looking at TSB's further submissions I'm not persuaded to change the conclusions I came to in my provisional decision. I'll explain why.

In my provisional decision I said that – based on the information it had discovered – TSB acted reasonably in declining Mr J's application for an account. But I said that I didn't think the answers he'd given during the application process showed he'd been fraudulent or dishonest and therefore there was no justification to add the marker to the CIFAS register.

TSB has said that there were a number of inconsistencies in the dates Mr J had been registered on the voter's role at his main address. And it had found that Mr J had appeared on the voter's role at an undisclosed address – where adverse data had been recorded. So TSB said the information Mr J gave wasn't accurate and justified its decision to record the CIFAS marker. I've carefully considered this information – including TSB's evidence that Mr J had come off the voter's role at his main address from 2004-2009. Mr J didn't know why that was the case although he did confirm that during that time he asked for his late mother to be removed from the register. But while I agree that discovering this information would affect whether or not TSB gave Mr J an account, I'm not persuaded it was sufficient to justify TSB registering the CIFAS marker.

TSB has confirmed one of the steps it followed in its actions was *"that the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police"*. The application form Mr J completed asked for his current address. He gave his answer – which based on the information he's provided which included council tax bills and bank statements with the current address on – I think was as accurate as it could've been based on what was asked. I don't think I can safely say that his answer would give cause to *"confidently report the conduct of the subject to the police"*.

I can appreciate TSB's frustration that it found address information it thought was inconsistent when looking at Mr J's account application. And it's right that TSB used that to determine the outcome of his application. But looking specifically at the questions it asked Mr J – and the answers he gave and the evidence since provided, I don't think it's fair to say he's deliberately given fraudulent answers. So I don't think there's sufficient evidence to justify Mr J having a marker being put on his credit file.

### **my final decision**

For the same reasons that I've already given in my provisional decision, I uphold Mr J's complaint against TSB bank plc.

TSB Bank plc should remove the CIFAS marker from Mr J's record and pay him £150 for the distress and inconvenience this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 April 2019.

Keith Lawrence  
**ombudsman**

Provisional decision from 9 November 2018

### **complaint**

Mr J complains that when his application for a current account with TSB Bank plc (TSB) was declined an incorrect marker was put on his credit file which has caused him problems. He wants the marker removed.

### **background**

In December 2016 Mr J applied online for a current account with TSB. Following credit and ID checks TSB declined the application. It didn't explain its reasons but Mr J accepted the outcome.

In March 2017 Mr J contacted TSB as he'd become aware that it had recorded his account application as fraudulent with the Credit Industry Fraud Avoidance System (CIFAS). He said he had provided correct information regarding his application and wanted the marker that had been applied to be removed.

TSB wouldn't remove the marker as it said Mr J hadn't given the correct address information in his application. It said it was right to follow its process and record that as fraud.

One of our adjudicators looked into the complaint and felt it shouldn't be upheld. Using the report Mr J had received from CIFAS she was able to confirm that adverse credit had been found in Mr J's name, at another address, which he hadn't disclosed as part of his application. She believed TSB had acted correctly in recording this with CIFAS and didn't think she could ask TSB to remove the marker.

Mr J disagreed. He said that the information he provided had been correct and the outcome that had been reached had breached his human rights. As no solution could be found the matter has been passed to me for a decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In order to resolve Mr J's complaint I have to consider two matters. Firstly whether TSB had sufficient evidence to record information with a fraud prevention agency and also whether it acted correctly in recording that information.

CIFAS is a fraud prevention agency that uses information from financial businesses which it keeps on a database so that other businesses can share the information to help them make informed decisions about potential customers. A business should only record information if it believes it has enough information to make a formal complaint to a law enforcement agency. So, I'd expect to see sufficient checks from TSB to demonstrate this, and also to see a record of those checks.

In this case I can see that when TSB considered Mr J's application for an account it found some information relating to a different address to the one Mr J had given as being his residence for over 22 years in his application. Further research has established that there was adverse credit recorded against Mr J at the other address. Mr J has been given this information directly from CIFAS.

TSB said it believed the lack of disclosure provided in the application about the different address to be a fraudulent act and that meant it had a duty to record the information. From the evidence I've seen about the application and TSB's processes in such situations, I'm satisfied that TSB carried out a robust enough check of Mr J's situation to decline his application for an account.

But I've also gone on to consider whether it was right to record the information and register a CIFAS marker against Mr J. I've looked at the application form that Mr J completed online. I can see regarding his residency that Mr J was asked for his current address, his time at that address and his previous address. TSB has confirmed those were the questions that Mr J would have seen as he completed his application. So, I have to consider if the information Mr J gave about his residency gave TSB sufficient reason to register a CIFAS marker against him. I think on balance that it didn't and I'll explain why.

I've seen the evidence Mr J provided to show he has lived at the address stated on his application since 1995. He's provided extracts from the electoral roll and other utility bills. So, I'm satisfied that was Mr J's address and had been for many years. When asked for his current address I think that's the one Mr J would have given. Mr J wasn't asked for any other addresses that he might have had links with so I can't say he gave fraudulent information or withheld answers that the application requested.

I've said previously that a business should only register a CIFAS marker if it believes it has enough information to make a formal complaint to a law enforcement agency. I think this a quite a 'high bar' and I'm not satisfied TSB had cause to register the marker. I don't think Mr J deliberately withheld information when he completed the application form so I don't believe TSB had justification to say that he'd acted fraudulently or had been dishonest.

Whatever TSB thinks about Mr J's actions, and I believe TSB was right to decline the account application, I don't think there isn't sufficient evidence to say Mr J deliberately gave 'fraudulent' information and I don't consider there's enough evidence to show that TSB should have taken the equivalent steps to making a formal complaint to a law enforcement agency.

Mr J wants TSB to reconsider its decision and has asked for the marker to be removed. He said this is causing him to have problems obtaining credit and also with his present and potential employers. I can understand this must be frustrating for Mr J especially with the wide range of issues this has caused.

So I've decided that, based on the information that Mr J was asked for and provided in his application, that TSB should ask CIFAS to remove the marker from his record. I also think this matter will have caused Mr J some amount of distress and inconvenience for which TSB should pay him £150.

### **my provisional decision**

So, for the reasons I've explained above, and subject to any further evidence I receive, I am minded to uphold Mr J's complaint against TSB Bank plc.

I intend to tell TSB Bank plc to:

- remove the CIFAS marker from Mr J's record.
- pay Mr J £150 for the trouble and upset caused by the marker.

Both parties now have until 23 November 2018 to provide me with any further information they want me to consider. I will then make my final decision.

Keith Lawrence  
**ombudsman**