

## **The complaint**

Mr K complains that John Lewis Financial Services Limited ('John Lewis') recorded a CIFAS marker against his name. CIFAS is the UK's fraud prevention agency. Mr K is also unhappy that they won't disclose certain information to him.

## **What happened**

In June 2016, Mr K applied online for a John Lewis credit card. His application was declined for reasons I will describe below. In 2019, Mr K discovered that John Lewis had placed a CIFAS marker against his name in relation to his 2016 application. Mr K complained to John Lewis about this.

John Lewis investigated Mr K's complaint. During a telephone call on 25 April 2019, a John Lewis advisor told Mr K that the CIFAS marker would be removed from his credit file. This was also confirmed in an email sent the following day to Mr K. However, in a further letter dated 9 May 2019, John Lewis wrote to inform Mr K that upon further investigation, the CIFAS marker had been applied correctly to his credit file. John Lewis explained if Mr K wanted to discuss matters further, he should contact CIFAS. They also provided Mr K with information on how he could refer his complaint to our service.

Mr K questioned John Lewis about why they had changed their decision. He also requested a Data Subject Access Request ('DSAR'). In an email sent on 23 May 2019, John Lewis informed Mr K that they were unable to send him the data he requested, as he made his credit card application online, and the data they did hold was restricted, so they couldn't disclose it.

Unhappy with John Lewis' decision, Mr K referred his complaint to our service. One of our investigators didn't uphold the complaint. In short, he was satisfied that Mr K failed to disclose certain information in his online application in 2016, so John Lewis had acted fairly when they had loaded the CIFAS marker. The investigator also thought that although John Lewis could've been clearer in their communication to Mr K, he didn't think this was enough to ask them to remove the marker or to pay compensation. Regarding the DSAR, the investigator asked John Lewis if he could disclose to Mr K the information he relied on in his findings. John Lewis didn't consent to this, which the investigator explained to Mr K and said that CIFAS could provide the information he wanted.

Mr K didn't agree with the investigator's findings, so he asked for an ombudsman to consider the case.

## **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.

Having done so, I'm not upholding it for largely the same reasons as the investigator. I'll explain why.

Mr K has made detailed and lengthy submissions about why he disagrees with the investigator's findings, which I've carefully considered. In summary, Mr K has raised several issues, ranging from the online application in question; to the criminal standard of proof not being satisfied when the CIFAS marker was loaded; and from the non-disclosure of evidence; to John Lewis initially confirming they would remove the CIFAS marker.

Mr K has said that the standard of proof that needs to be satisfied for a CIFAS marker to be loaded is: the same standard of proof applied in the criminal courts to secure a fraud conviction. That is, beyond a reasonable doubt. Having considered this, I'm not inclined to agree. I say this because the standard of proof that needs to be met to load a CIFAS marker, is not beyond a reasonable doubt – in fact, the standard is lower. A business can load a CIFAS marker if they have reasonable grounds to believe a fraud has been committed or attempted, which they could report to the police to investigate.

I'm satisfied that John Lewis had reasonable grounds to believe this. Based on the evidence I've seen, when Mr K made his online application in 2016, he provided incorrect information about his residence and there was a benefit to him in doing so. I think, John Lewis would have had grounds to report matters to the police and as such I think they acted fairly when they reported this to CIFAS.

I acknowledge the fact that John Lewis incorrectly told Mr K over the telephone and in writing that they would remove the CIFAS marker against his name. However, this error does not justify the removal of the marker, as I think it was loaded correctly. I'm also not persuaded that this warrants financial compensation. I say this because although John Lewis had made an error, I can't see that it resulted in any financial loss for Mr K. I'm also not persuaded that the impact of this incorrect information caused Mr K distress or inconvenience to the extent that compensation would be appropriate. John Lewis also recognised their error and confirmed to Mr K that the CIFAS marker had been loaded correctly promptly.

In relation to Mr K's DSAR, he is unhappy that John Lewis have said that the data they hold is restricted, which they're unable to disclose. It's not our role to fine or punish a business for deciding not to disclose certain information when considering a DSAR. If Mr K is unhappy with what John Lewis has said, he is free to take this up with the Information Commissioner's Office ('ICO').

### **My final decision**

For the reasons set out above, 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 K to accept or reject my decision before 9 December 2020.

Richard Annandale  
**Ombudsman**