

The complaint

Mr T has complained that Bank of Scotland plc (trading as Halifax) registered a marker at CIFAS, the national fraud database.

What happened

In 2015, Mr T applied for a Halifax mortgage through a broker. According to the electronic record of the application, the broker asked Mr T if he'd had court judgements, and it's recorded that Mr T responded negatively.

Halifax then discovered that Mr T had had a county court judgement (CCJ) some years prior. It declined his application.

Halifax also registered a fraud marker against Mr T with CIFAS. It looks like it did not carry out any further checks or investigation before registering this marker, and did not tell Mr T about it at the time.

In 2019, Mr T complained about the marker, but Halifax declined to remove it. Our investigator also felt the marker was fair, as ultimately Mr T had given incorrect information on his application.

Mr T didn't agree. He explained that he hadn't thought the CCJ was relevant, as it was to do with an unrelated dispute from quite some time ago and had been paid off in full. He said it was an innocent mistake, made when answering a series of questions in quick succession without having much time to think about it. He says that had Halifax contacted him at the time to clarify the information, this whole matter could have been avoided. Mr T says that the marker is now preventing him from being able to open an account he needs. He's asked for the marker to be removed.

I sent Mr T and Halifax a provisional decision on 2 December 2020, to explain why I thought the complaint should be upheld. In that decision, I said:

I need to consider whether this report to CIFAS was made fairly. On this point, Halifax needed to have more than just a simple suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted, and that the evidence would support this being reported to the authorities.

It is not in dispute that Mr T was asked about previous judgements and failed to mention a CCJ. The issue is whether Halifax had reasonable grounds to conclude that this was an intentional attempt to commit fraud.

Halifax does not appear to have made any significant investigation into the matter at the time. This is a point of concern. It is difficult for me to see how Halifax could be satisfied that Mr T intentionally tried to deceive it without really looking into the matter or trying to clarify the situation.

For example, the electronic record of the application appears to use a pre-set templated form, rather than being an exact record of what was discussed. So I can't say for certain how the mortgage broker phrased the question, or what emphasis was placed on it, or what Mr T's exact answer was, and so on. Mr T says that the question was asked and answered in merely a couple of seconds, as part of a long list of questions, and so he didn't really think about his answer at the time. That seems really quite plausible.

Indeed, Mr T's testimony has been consistent and plausible throughout the case. It seems reasonable that he could have made such an error without really thinking about it, not least with the context of the years that had passed since the judgement, and of why he may have thought the judgement wasn't relevant (albeit erroneously).

I am, of course, conscious that it is also a plausible possibility that Mr T intentionally tried to deceive Halifax. But that alone is not a good enough basis on which to register a CIFAS marker. Halifax needed to have more than just a suspicion or concern about the possibility of fraud. It needed to be able to reasonably show that this was fraud, and not merely a mistake or misunderstanding. But because of its lack of investigation at the time, I don't think it's able to do that. So I am not persuaded that Halifax had sufficient grounds to apply this CIFAS marker, nor can I safely conclude that the marker is fair.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 30 December 2020. Neither Halifax nor Mr T sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before – that Bank of Scotland plc needs to remove the CIFAS marker in dispute.

My final decision

I uphold Mr T's complaint, and direct Bank of Scotland plc to remove the disputed marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 February 2021.

Adam Charles
Ombudsman