

## **The complaint**

Mr D complains that Bank of Scotland plc trading as Halifax made an entry about him on a fraud prevention database (CIFAS) relating to his mortgage account.

## **What happened**

Mr D took a mortgage with Halifax in 2016. In 2018 Halifax did further checks on his application. It was unable to verify the income he had declared, so it decided to make an entry on the fraud database about Mr D.

In 2020 he applied for credit with other lenders but was declined. He made a subject access request (SAR) and found that Halifax had registered a marker with CIFAS.

Mr D raised a complaint, which Halifax rejected as it said it had sufficient grounds to apply the marker. It explained that when Mr D's application was reviewed, it carried out its usual underwriting checks but was unable to verify the income Mr D had declared. So it said the CIFAS marker was appropriately recorded as it was provided with incorrect information about Mr D's income. Unhappy with this response, Mr D referred his complaint to this service.

Mr D also raised a complaint with CIFAS and the entry was removed around September 2020. He was approved for a mortgage with another lender shortly after this.

Our investigator considered the complaint and thought it should be upheld. As the marker had already been removed, she recommended Halifax pay Mr D £300 for the trouble and upset caused by the matter. Mr D didn't think this went far enough and asked for an ombudsman to review the matter.

I understand Mr D has other complaints with this service. In what follows, I've only looked at his complaint about Halifax and whether it acted fairly when it applied the marker, and initially declined to remove it.

## **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.

The CIFAS database publishes principles for its members. One of the principles says that lenders should only record entries on its database if the standard of proof is met – that standard being for the lender to have reasonable grounds to believe a crime has been committed or attempted, and it has clear and relevant evidence to the extent that it could confidently report that to the police.

Here, Halifax was unable to verify Mr D's income and the payslips he had provided. This could be for a number of reasons, only one of which being that fraud had been committed, and so I consider it reasonable for Halifax to have further investigated the issue with the

income first, before entering the marker. I'm aware that guidance to that effect has been given by the database to its members.

With this in mind, I'm not persuaded that Halifax had sufficient evidence to reasonably conclude that the threshold for putting a marker on had been met.

Since making the complaint, the marker has been removed and Mr D said he was able to get a mortgage with a different lender and access other credit, though he says he suffered financial loss while it was there. And I think the presence of the marker did cause some distress and so I've thought about what Halifax now needs to do to put things right.

### **Putting things right**

Mr D says he suffered financial loss and has shared draft correspondence from his solicitors asking for damages from Halifax in the region of £50,000 for this matter. It's not clear how this sum was reached but I've thought carefully about whether Mr D has suffered any financial loss as a direct result of this marker.

His broker says they didn't put forwards any applications for mortgages because they were told that the presence of the marker would result in them being immediately declined. But this was never tested - and there can be a number of reasons why a mortgage application is not successful. I'm also aware that the database's guidance for members is that a marker should be a reason for a lender receiving an application to make its own enquiries. It should not be a reason for an automatic decline. So I'm not persuaded that if an application had been made, it would have been unsuccessful purely due to the presence of the marker.

Mr D says he felt forced out of his mortgage by Halifax as it didn't offer new terms and was so worried about the matter that he sold his house and bought a new one with a mortgage from another lender. The process, he says, was made even more stressful as he had paid a non-refundable deposit.

I can understand that the presence of the marker must have been concerning and that it added further worry to the stress of a house purchase.

But there can be several reasons why someone may wish to move to a new house – such as upsizing to get more space or a change of location. From the information I've seen, I don't think Mr D making this change was as a direct result only of the presence of the marker. And it's important to note that once the marker was removed, Mr D applied for another mortgage quickly and moved within a reasonable timeframe.

Mr D has also shared information he received as a result of a SAR with another lender which he says shows the marker was the reason his application was declined. I've looked at this carefully and agree that the CIFAS marker was flagged. But I can see that this was one consideration amongst others and so I'm not persuaded that the marker was the sole reason the credit was declined.

For these reasons, I don't think he's suffered a direct financial loss due to the presence of the marker.

But I do think Mr D has been distressed by the discovery of the marker and had to go to some bother in raising his concerns to CIFAS before it was removed. With this in mind I've thought carefully about the level of compensation Halifax should pay for the trouble and upset caused. Having considered everything that's happened here, I'm satisfied that £300 is a reasonable and fair amount of compensation.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Halifax to pay Mr D £300 for the trouble and upset caused by applying this entry.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 June 2021.

Camilla Finnigan  
**Ombudsman**