

The complaint

Mr S complains that Bank of Ireland (UK) Plc (BOI) recorded an entry about him on a fraud prevention database (CIFAS) in connection with a mortgage application.

What happened

In 2020, Mr S applied for a business account but was declined. He looked into why this had happened and found that BOI made an entry on CIFAS about him in 2017 following a declined application for a buy-to-let mortgage.

He complained to BOI who, on review, agreed to remove the marker but maintained that it was applied correctly - in line with the rules at the time. BOI said it entered the marker because the property was an unlicensed "home in multiple occupation" (HMO) and this was not disclosed clearly on the application form. It also said the property was being sold privately rather than through estate agents as Mr S said.

Mr S said he had no knowledge that the house was an HMO and planned to let it as a single tenancy.

Mr S brought the complaint to this service. Our investigator thought it should be upheld and, as the marker had already been removed, recommended that BOI pay Mr S £250 for the trouble and upset caused. Mr S didn't think this went far enough and asked for an ombudsman to review the matter.

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.

I've first thought about whether it was reasonable to apply the marker in 2017. CIFAS is an industry wide fraud prevention agency and its main aim is to do just that – prevent fraud. In 2018, it published principles for its members to help with the accuracy of cases filed and ensure the proportionate use of personal data following new legislation. There are eight principles for members that can be found on the CIFAS website.

BOI says that as the application was made in 2017, before these principles were introduced, it correctly applied the marker in line with the rules at the time. But – due to the serious consequences that an entry can have - there was still the need to have sufficient and relevant evidence to substantiate a reasonable suspicion that fraud had been committed or attempted, before making an entry.

Here, BOI said it applied the marker as there were discrepancies in the application and the valuation report showed that the property was an unlicensed HMO. I agree that there were discrepancies in the application, but having carefully considered the information provided, I think BOI could have asked for more information or carried out further checks before applying the marker.

Mr S has explained that there was confusion and that he had viewed a property across the

road to this one. That property had already been sold and so he was told about the opportunity to buy this one but didn't realise that it was an HMO. I think that's plausible.

And regardless, it wasn't Mr S but the seller of the property who was using it an unlicensed HMO. There's no evidence to show that Mr S intended to do the same.

I don't think the discrepancies in the application and conflicting information on the valuation report are enough here. And so I'm not persuaded that BOI had sufficient evidence or reasonable grounds to suspect an attempted fraud. It follows that without this – the marker should not have been entered.

BOI has also said that an HMO would have been in breach of its lending criteria for buy-to-let properties in 2017 and that at the time it didn't accept private sales. That may be the case and valid reasons as to why the application was declined. It's for BOI to set its lending criteria and ultimately decide whether to lend. But that shouldn't have any bearing on whether a marker with a fraud prevention agency such as CIFAS is made or not.

I'm not persuaded in the circumstances that it was fair for BOI to make a report.

As the marker has now been removed, I've thought about whether BOI need to do anything further to put things right.

Putting things right

Mr S has said that he has direct and indirect losses due to this entry which amount to around £15,000. Most notably he's said he incurred business losses as his application for a coronavirus bounce back business loan was declined due to the marker. As our investigator has explained, the marker was logged against Mr S as an individual and not against his businesses. Because of this, I'll only be considering any losses and distress suffered by Mr S directly, not any business damages.

Mr S says he hasn't been able to re-mortgage on some of his properties because of this and as a result is paying high interest rates as he has been classified as 'high risk'. But I can't be certain that this was as a direct result of the CIFAS marker.

There could be other reasons for the decision to decline an application to re-mortgage. 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 and that it should not be automatically declined due to the presence of a marker. Mr S and his broker could get in touch with his lenders to discuss the situation.

For these reasons, I'm not persuaded that Mr S has suffered financial loss as a direct result of the presence of the marker.

But I do think Mr S has been distressed by the discovery of the marker and had to take the time and effort to raise a complaint before it was removed. With this in mind, I've thought carefully about the level of compensation I think BOI should pay for the trouble and upset caused.

Having considered everything that's happened here, I'm satisfied that £250 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

Ireland (UK) Plc to pay Mr S £250 for the trouble and upset caused by applying this entry.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 July 2021.

Camilla Finnigan
Ombudsman