

The complaint

Mr A complains that Bank of Ireland (UK) Plc (BoI) made an entry about him on a fraud prevention database following an application he made for a buy to let mortgage.

What happened

In 2018, Mr A applied via a broker to BoI for a buy to let mortgage. It refused the application and Mr A was able to get his mortgage with another lender.

Later, Mr A applied online for a bank account with another bank. The account was opened successfully, but a few weeks later the bank closed it. When Mr A complained, the bank advised him to make a subject access request to CIFAS, an industry fraud prevention database.

Mr A discovered that as well as refusing his mortgage application, BoI had made an entry about him on the CIFAS database. The database entry was for “application fraud” and said that Mr A had failed to declare a County Court judgment (CCJ) when he made his application.

Mr A complained to BoI. It refused to remove the entry, and so Mr A brought his complaint to us. He said he had told his broker that he had had a CCJ recorded against him in the past, but it was now settled.

Our investigator thought that it was the broker’s fault that the CCJ hadn’t been declared, and said BoI should remove the marker. BoI didn’t agree. It said that the CCJ wasn’t the only concern it had about Mr A’s application, and asked for an ombudsman to decide the issue.

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 application form includes the question “*Has the applicant ever had a court judgment or default made against them?*”. This question has been answered “No”. It’s accepted by all parties that this wasn’t accurate.

Mr A has obtained call recordings of his conversations with his broker, which I’ve listened to. There’s a long and detailed discussion about the CCJ, its implications for Mr A’s application for a mortgage and all the relevant background. In a later call, Mr A agrees that the broker can complete and submit the application online on his behalf.

I’m therefore satisfied that Mr A told his broker that he had had a recent CCJ, intending that it should be declared as part of his application. He also provided a copy of his credit file, showing the CCJ. The broker then completed the application. And I’m also satisfied that it was the broker’s error that led to an incorrect answer being given on the complaint form. I don’t think there’s evidence that Mr A tried to hide the CCJ or to conceal it from BoI.

BoI said that the CCJ Mr A had specifically discussed with the broker wasn’t the only CCJ he

had had – it had found evidence of charging orders over his property, showing he had had judgments against him in the past. And it said Mr A was director of a company – which also hadn't been declared on the application. It therefore wasn't prepared to remove the entry on the database.

I've borne in mind the principles CIFAS sets out for its members, which are publicly available on its website. One of the principles sets out the standard of proof for making an entry – which is that there must be reasonable grounds to believe there has been a fraud or attempted fraud, supported by clear relevant and rigorous evidence that could be reported to the police. There are various criminal offences that amount to fraud, but a common feature is seeking to gain financially through dishonesty.

I'm not persuaded that Bol has shown that this threshold was reached. Its application form asks about CCJs, and had the broker followed Mr A's instructions, the relevant question would have been answered "Yes". And that would have been true – not misleading.

Although it appears that Mr A has historic CCJs as well as the recent one he specifically discussed with the broker, I've not seen any evidence that he actually saw the question on the form before the broker completed it. I'm satisfied that he gave the broker information he was asked for and I'm not persuaded there's clear and rigorous evidence that Mr A was dishonestly seeking to mislead Bol. Had his instructions been followed, Bol would have received an accurate answer to the question it asked.

Mr A accepts he was a director of another company. That company appears to have been created and then wound up without ever trading.

Bol's application form does not ask for details of directorships. It asks for details of income. And if Mr A was not drawing an income from the company, it would not be misleading that it wasn't mentioned on the form. Again, I'm not persuaded that there's clear and rigorous evidence that Mr A set out to dishonestly mislead Bol about his income.

Putting things right

When Bol received the application form and carried out its underwriting checks, it discovered that the application form was incorrectly completed, apparently concealing the fact that Mr A had had CCJs recorded against him. I don't think it was unreasonable at that point, based on what it knew at the time, for it to have made the entry on the database.

But once Mr A provided evidence to show that there was a mistake by his broker, rather than a dishonest intention on his part to mislead, the rationale for recording the entry falls away. And I therefore think it's fair for Bol to remove it now.

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 remove any fraud prevention database entry it has made about Mr A in connection with this mortgage application.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 June 2021.

Simon Pugh
Ombudsman