

## **The complaint**

Mr and Mrs S complain that Santander UK Plc made an entry about them on the CIFAS fraud protection database in connection with a mortgage application, and wrongly refused their application.

## **What happened**

Mr and Mrs S applied to Santander for a mortgage. Santander refused their application and left a fraud marker on the CIFAS database, though it didn't tell Mr and Mrs S that at the time.

Mr and Mrs S found out about the marker following a later credit application. They made a subject access request to CIFAS, which showed that Santander had reported application fraud, saying that they had provided false income details in support of the mortgage application.

Mr and Mrs S complained. They said the wage slips included with the application were genuine and provided by Mr S's employer. They wanted Santander to remove the marker, grant them a mortgage, and compensate them for the extra costs they've had to pay in continuing to rent rather than own their home.

Santander wouldn't remove the marker, so Mr and Mrs S brought their complaint to our service. Our investigator thought that Santander hadn't shown a good reason for the marker so she said Santander should remove it and pay Mr and Mrs S £250 compensation. Mr and Mrs S accepted that, but Santander didn't. So the case comes to me to decide.

## **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.

Fraud prevention databases play an important role in the financial services landscape, allowing sharing of information and assisting in the prevention of fraud. However, the consequences for an individual of being added to a database can be severe, so it's important that a marker is only entered where it can be justified.

The standard of proof for putting a marker on the CIFAS database is that there must be clear, relevant and rigorous evidence of fraud, such that Santander could confidently report the matter to the police or other authorities (whether or not it has actually done so).

The standard required is therefore one of reasonable suspicion, not proof. But there must be evidence of fraud. There are various fraud offences, but a common feature is acting dishonestly for financial gain.

I've borne that in mind when considering the evidence in this case. When I do so, I am not deciding whether or not I think it's likely Mr and Mrs S did – or did not – make a fraudulent application to Santander. What I am deciding is whether – taking into account what I've said about the standard of proof – it was fair and reasonable for Santander to conclude it had enough evidence to put a marker on the database.

Having considered this carefully and looked at all the evidence, I'm not persuaded that it did.

Santander says that it thinks Mr and Mrs S did not accurately declare their income. It says it tried to verify their income using its standard third party checks but was unable to do so. And it says there were discrepancies between the application, the payslips and the P60s provided. It also questions Mrs S's employer, which appears to have been owned by Mr S. It also says they provided misleading information on their application form about other mortgage applications they had made.

I'm not persuaded by what Santander says here. The payslips both Mr S and Mrs S provided match the gross salaries declared in the application form, and match money going into their joint bank account. And while Mr S's income couldn't be verified, it's possible to explain that on the basis that Mr S changed employment during the year, and so his overall income for the tax year would not match the declared salary. In any case, where income cannot be verified that should be a trigger for further enquiries – it is not enough of itself to justify a marker. I'm not persuaded this evidence is enough to reach the threshold of a reasonable suspicion of fraud.

Santander also noted that Mrs S worked for a company that Mr S owned. It's not unusual for spouses to work for each other. At the relevant time, the company was trading and had filed accounts to Companies House showing activity. I don't think the fact that Mrs S worked for a company owned by Mr S – even where he himself was employed elsewhere – is evidence of fraud.

Santander has also pointed to what it says is misleading information on the application form about previous applications to other lenders. Mr and Mrs S declared that they had made other applications, but that the lenders had not gone ahead with them. And Santander found evidence that other lenders had refused applications Mr and Mrs S had made. That's consistent with what they said – I don't agree that the form is misleading. Mr and Mrs S wouldn't have known the detailed reasons for those refusals. Nor are decisions other lenders made relevant to the decision Santander had to make; it should come to its own view of the situation based on the evidence it has.

Taking everything into account, I'm not persuaded that it was reasonable for Santander to record the marker. Some of the information provided, and the checks it made, raised some questions which it was reasonable for Santander to investigate further. But I don't think there was enough to show that the threshold of reasonable suspicion of fraud and dishonesty had been reached.

### **Putting things right**

That being the case, Santander should remove the marker. I don't however think it's fair to require Santander to grant Mr and Mrs S a mortgage. Lenders never *have* to lend; they're entitled to consider and refuse applications. Mr and Mrs S's application had a long way to go and could have been refused on other grounds – such as affordability, or something to do with the property – even if it hadn't been refused at this stage. As it was never considered further I don't think I can safely say that Santander *should* have lent to them, or that it's more likely than not that it *would* have done.

However, I do think the later discovery of the marker caused Mr and Mrs S some upset and inconvenience, and Santander should compensate them for that. I agree with our investigator that £250 is fair in all the circumstances.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Santander UK Plc to:

- Remove any external fraud markers made in connection with this mortgage application; and
- Pay Mr and Mrs S £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 14 January 2022.

Simon Pugh  
**Ombudsman**