

The complaint

Mr and Mrs K complain that Bank of Ireland (UK) Plc refused to allow them to complete their self build mortgage and recorded information about them on the CIFAS fraud prevention database following their application.

What happened

Mr and Mrs K applied to Bol for a mortgage on a self-build property. Bol agreed bridging finance to fund the construction, with mortgage funds to be drawn down on completion to repay the bridging finance. The mortgage offer was valid for 12 months, which meant that was the deadline for completing the property.

Mr and Mrs K began building their property and drew down the funds. They were unable to complete the property within 12 months – they say due to bad weather delaying construction – and so the mortgage offer lapsed.

Mr and Mrs K therefore had to re-apply for their mortgage. Bol rejected their application and – unknown to Mr and Mrs K at the time – also made an entry about them in the CIFAS database.

Mr and Mrs K say they were able to complete their build, but only by borrowing the funds they needed from family and friends. Bol agreed to convert the bridging into a separate loan, but would not offer them a mortgage.

CIFAS is an industry-wide database used to share information in the interests of fraud prevention. Among other things, it allows lenders to share information about applications it has concerns about. In this case, it placed a marker for application fraud under Mr K's name, on the basis that he had declared false income on the application.

Mr and Mrs K say they did not mislead Bol in their application. And the marker caused them difficulties in obtaining further finance they needed. And it has caused further problems with Mr K getting the credit he needs for his self-employed business.

Mr and Mrs K complained. But Bol did not agree to remove the marker, so they brought their complaint to us.

Bol said it had assessed Mr and Mrs K's application to extend the time for completing the mortgage, but had declined the application. It had considered the information they provided but had concerns about some of it. In particular, it was concerned by what it considered to be discrepancies between the income Mr K declared and his company's accounts.

My provisional decision

I issued a provisional decision setting out my view of the complaint. I said:

In considering this complaint, I've noted that the CIFAS database plays an important part in the security of the financial industry – and that placing a marker about an individual can have serious consequences for them. The database therefore sets a threshold for members – such as Bol – in making a report. It's a principle of the database that an entry should only be made where there's clear relevant and rigorous evidence of fraud, such that Bol could confidently report the matter to the police or other authorities. That doesn't require a report to the police to actually be made, and there's no suggestion Bol did so here. But that's the standard of proof CIFAS requires of its members.

I've borne that standard in mind in considering whether Bol acted fairly. In doing so, I've noted that there are in law a number of fraud offences – but that a common feature is acting dishonestly for financial gain.

I've gone on to look at the information Mr K provided, as well as the checks Bol carried out and the notes made by its underwriters.

In the application, Mr K stated that he was self-employed through his limited company, and set out his income. He also provided details of his accountants and tax records. Mrs K said that she was employed separately and provided payslips from her employer.

Mr K's accountant provided a letter in support of the application. This had an incorrect figure and the accountant later corrected it, explaining it was a typing error.

Bol accepted that was an error. But it remained concerned about other discrepancies. In particular, it said that there were significant changes in the company's accounts from year to year; and that the figure for Mr K's earnings in the accounts did not match the amount showing in his tax return to HMRC. It also said that associated bank accounts showed very little trading activity.

I've considered the documents myself, and also taken account of Bol's concerns about Mr K's finances.

It was content with what Mr K had said a year earlier, when the original mortgage offer was issued. But in relation to the second application, it was no longer happy. It was concerned about the income Mr K had declared and the evidence provided in support of that income.

Mr K's income according to the accounts and tax information was less than declared on the application – though it seems that some had been treated differently for tax purposes. And it seems Mr K had done less other work while he focussed on the build of the property, so some of his income was in effect the property loan. But from Bol's point of view it had concerns about whether Mr K's income was sustainable.

I think those concerns were reasonable, and I don't therefore think it was unfair that Bol refused the second mortgage application. However, I'm not persuaded that this went beyond affordability concerns or that there was clear relevant and rigorous evidence that Mr K had deliberately and dishonestly given Bol false information about his income – which, as I've said, is the threshold for making a report to CIFAS. I think it would therefore be fair for Bol to remove the marker.

I've not seen any evidence that the presence of the marker caused Mr K financial loss. When he replies to this provisional decision, if Mr K has any evidence of loss he should provide it and I'll take that into account.

But I do think discovering the marker and the upset that resulted caused Mr K distress and inconvenience. I intend to require Bol to pay £300 compensation for that.

The responses to my provisional decision

Mr and Mrs K accepted my provisional decision. But Bol didn't. It said:

- Mr and Mrs K didn't provide information that Bol requested when it requested it;
- Bol was unable to verify the income they declared on the application;
- It was concerned that the mortgage would not be affordable because it was concerned that Mr K's business wasn't stable;
- It was concerned that the business's income wasn't accurately reflected in its accounts;
- Mr K's business has since been dissolved.

However, it didn't provide any further evidence that wasn't available when I reached my provisional decision.

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 also considered again the findings in my provisional decision in light of the responses to it. But having done so I haven't changed my mind. It was reasonable for Bol to refuse the mortgage application – it has a broad discretion about whether to lend, and must satisfy itself that the lending is affordable. However, for the same reasons I gave in my provisional decision, I'm not persuaded that the standard for making an entry on the CIFAS database was met.

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 markers made on external fraud databases in connection with this mortgage application, and pay Mr and Mrs K £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 7 April 2022.

Simon Pugh
Ombudsman