

The complaint

Mr L is unhappy that Blue Motor Finance Ltd (“BMF”) placed a fraud marker against his name.

What happened

In January 2021, Mr L complained to BMF after he discovered it had applied a fraud marker against his name using the Cifas database in 2018.

BMF responded to Mr L’s complaint pointing out that after investigation, it had applied the fraud marker correctly. It said:

- Mr L was twenty-five payment in arrears on his motor finance agreement.
- Its agents had attempted to recover the vehicle, but were unsuccessful.
- For the above reasons, it felt Mr L had committed theft and reported the matter to the police.
- The matter was also recorded with Cifas for the same reasons.

Mr L remained unhappy with BMF’s response, so he came to our service to assess his complaint independently. Mr L told our service that he believed BMF had applied the marker due to him being in financial difficulties. He provided the following testimony:

- Repayments were made on the vehicle from the time the credit agreement was taken out in 2016 up until January 2018. These repayments equated to circa 80% of the total sum owed.
- Repayments ceased in 2018 as he fell into financial difficulty. He was residing abroad at the time due to work commitments and wasn’t receiving the correspondence being sent to him by BMF.
- The vehicle was then seized by police in the country he was residing in due to BMF reporting the vehicle stolen.
- He then contacted BMF and offered to repay £5,000 in full and final settlement of the agreement. This was refused as the outstanding balance was over £7,000. But Mr L found this offer reasonable considering the costs he would incur from having the vehicle released.

An Investigator considered this testimony against the evidence provided by BMF. Having done so, they concluded that BMF had made an error. Broadly summarised, the Investigator pointed out that while Mr L had breached the terms of his credit agreement, the evidence didn’t support that a fraud or financial crime had been committed or attempted. They recommended that the Cifas be removed and that £500 be paid to Mr L for the impact the marker had.

BMF disagreed. It maintained that Mr L took the vehicle outside of the jurisdiction of the UK, and this in turn supported the fact he was depriving it of the asset. It also pointed out that it’d reported the vehicle as stolen to the police, and as this was accepted, this further supported its argument that the Cifas loading was applied fairly.

As BMF disagreed, the matter was passed to me for a decision. On 15 August 2022 I issued provisional findings to both parties; these were as follows:

“The relevant considerations here are set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

- 1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.*
- 2. That the evidence must be clear, relevant and rigorous such that the member [BMF] could confidently report the conduct of the subject [Mr L] to the police.*

The sequence of events that I’ve witnessed from testimony and evidence support that, at the time of loading the marker, BMF did have sufficient reasoning to fulfil these two requirements. Mr F had failed to make a substantial number of payments, was ignoring or not engaging fully with correspondences BMF sent to try and resolve the matter and he, and the vehicle, were untraceable through investigations.

I have considered the fact that Mr F had already paid off a substantial balance of the total sum owed, and that he’d entered into a repayment agreement suggesting he was in financial difficulty. And these factors don’t represent a person intent on defrauding a business. But Mr L did still owe a significant balance and was failing to make repayments of this balance or meaningfully engage with the business regarding it. So, I can see why BMF felt it appropriate to load the marker at this stage; it wasn’t aware of Mr L’s circumstances due to his own inaction and it’d failed in its attempts to trace him or the vehicle.

Having said this, I don’t think it was appropriate to retain the marker later in the sequence of events.

In January 2019, Mr L decided to begin meaningful dialogue with BMF: one year after he’d last contacted it. In these emails, Mr L began to explain in more detail his current circumstances. He pointed out that he’d not received any correspondences regarding the outstanding debt, he didn’t realise the Direct Debit payments had ceased and had moved abroad.

BMF responded to Mr L’s email stating that in order for collections activities to cease, he’d have to repay the remaining balance in full.

It was after this point that Mr L informed BMF that the car had been seized in the country he was living in and that he had to pay £2,500 to have it released. As such, he offered to pay BMF £5,000 in final settlement of the debt deducting the release fee from the total amount owed. This offer was declined.

I don’t find, from this point forward, that BMF had sufficient evidence to support the retention of the marker. Mr L had provided a reasonable explanation to his circumstances which BMF decided not to look into further. I think it’s likely that this occurred as BMF were concentrating on its collection activities rather than considering the marker that it’d applied. But I’m persuaded that Mr L’s explanation is convincing. He clearly did take the vehicle to another country, has provided our service with evidence that it was seized by police and had not only paid off a vast proportion of the debt prior to falling into financial difficulties, but offered to pay a large proportion of the remaining balance to settle the matter. I don’t find these to be the actions of a person intent on defrauding BMF or commit a financial crime against it. Mr L was unable to return the vehicle due to it being in police

custody and was attempting to negotiate the matter with BMF in a way that he felt was acceptable for both parties.

BMF has made submissions that its reporting of the vehicle being stolen to police—and this being accepted by them—is a clear indicator that it'd met the bar for a loading to be placed. But what BMF has failed to consider is that this is solely based on information it has provided to police at the time. I've seen no evidence that Mr L's own testimony or evidence has been included in any submissions to police and I've seen no evidence of any ongoing criminal proceedings against him.

For all the above reasons, I don't find the marker now fairly meets the requirements set out by Cifas.

I've also considered how the marker has impacted Mr L and if he contributed to this in some way. Having done so, I don't find the £500 recommended by the Investigator to be fair.

As I've already referred to above, the marker was, in my view, initially recorded correctly. And I do find that the situation that Mr L had gotten himself into was largely down to his own actions or inactions.

Had Mr L ensured that he maintained the payments agreed with BMF, or told it about his change of circumstances, address or contact details, it's unlikely he would have ended up in arrears or had the marker recorded: both of which went on to impact his credit rating. Furthermore, taking the vehicle out of the country was a breach of the terms of the credit agreement and prevented BMF from being able to trace him.

I've also considered the police report he's provided to our service. I've seen no evidence that the vehicle was taken from him due to BMF's reporting of the vehicle as stolen. To the contrary, the report highlights that the vehicle was left unattended for a lengthy period of time at the place it was seized from and Mr L had no papers to support his ownership. So, I think the reasons Mr L gave for not settling the full amount were unreasonable considering BMF's actions had no impact on what occurred. This is further supported by Mr L's testimony that it would require £2,500 to have the vehicle released; something that wouldn't be plausible if the car was being treated as stolen.

While I appreciate Mr L did fall into financial difficulties, and no longer had access to the vehicle he was making repayments on, I do find that his actions were a significant factor in the impact that was felt from the failure to make repayments and breaching the terms of his agreement.

For the reasons above, I'm minded to say that the Cifas marker should now be removed without delay. But I don't find it appropriate that BMF pays Mr L compensation for the impact the marker, and any missed payments, caused."

Both parties responded to my provisional findings with further submissions.

Mr L disagreed that he shouldn't be owed compensation. Broadly, he pointed out the following:

- While the report that was provided from police related to a previous seizure of the vehicle, he maintained that the vehicle was seized again as a result of BMF's reporting of the vehicle as being stolen. This led to the offer of final settlement that reduced the cost of retrieving the vehicle again.
- He maintained that the Cifas marker wasn't loaded correctly in the first instance. He

felt that the loading of the marker and the reporting of the vehicle to police as stolen was inappropriate where he was experiencing financial difficulty.

- He was the legal owner of the vehicle while he was abroad, so was not in breach of any contract.
- The Cifas marker precluded him from doing day-to-day banking as he couldn't open accounts and had his existing accounts closed.

BMF also asked that further information be taken into consideration. It provided a historic news article showing that Mr L had been involved in fraudulent practices and asked that the decision be reconsidered on this basis.

As both parties have now responded to my provisional findings, I'm now in a position to issue my final 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.

Having considered the additional submissions provided by both parties, I'm not persuaded to depart from the findings given in my provisional decision. I don't intend to repeat what I've already highlighted in my previous decision, but I will respond to the additional points raised.

Mr L has pointed out that he wasn't in breach of his contract and claims to have been the legal owner of the vehicle. But having checked the agreement he signed with BMF, I don't agree with either of these points. The terms of his agreement clearly state the following:

"3. Selling or disposing of the goods

You must keep the goods safely at your address shown on the preceding pages...If your goods are a motor vehicle, you must keep it at your home address shown on the preceding pages when it is not in use and you are allowed to take the vehicle to any country in the EU for up to 30 days (maximum of 60 days in any calendar year) but no more and you may only take the vehicle outside the UK at all if this is permitted under your motor insurance policy...

...5. Change of address

You must let us know, in writing, within seven days about any change of your address."

Considering the above terms, it's clear that Mr L has breached them. He took the vehicle to a country outside of the EU and for over the time period allowed as part of his agreement. He also failed to inform BMF of his circumstances and change of address. Not only did this remove the vehicle from BMF's jurisdiction—denying it the ability to repossess—but his lack of adherence to the terms also led to failed attempts by BMF to contact him and resolve the issue of his failure to make repayments.

However, for the reasons I've already set out in my provisional findings, I don't find it likely this was deliberate or with malicious intention considering the evidence now provided. Nevertheless, Mr L did sign the agreement and therefore agreed to the terms of it.

I've also seen no evidence to support Mr L's claim that the vehicle was seized again by police in the country he was residing in as a result of BMF reporting the vehicle as stolen. But even if Mr L were able to provide this, it wouldn't persuade me that he was still entitled to compensation. I say this as I remain of the opinion that BMF were correct to load the marker at the point that it did. Mr L had failed to make a number of repayments on the vehicle over a

significant period of time. BMF also spent considerable time and resources attempting to trace the vehicle as a result of this. And despite numerous attempts to engage with him, Mr L failed to make any meaningful contact with BMF to explain his circumstances or arrange alternative methods of repayment.

Considering that Mr L contributed substantially to the reasons for the marker being loaded in the first place, I don't think it would be fair or reasonable for BMF to compensate him for this. Even at the point that Mr L did begin engaging with the business, the loading had been against his name for some time. And the damage to his credit rating had already been done from his non-repayment of the debt and the marker which had been placed correctly at the time. So in concluding, I don't think it would be fair or reasonable to expect BMF to compensate Mr L for the impact these had on him.

I'm also not persuaded to change my view based on the article BMF has provided about Mr L's previous conduct. This matter is historic and unrelated to the circumstances of this complaint. I've already provided extensive reasoning as to why I don't find Mr L has acted intentionally dishonest in the circumstances of this complaint, and I remain of that opinion considering the evidence and testimony that has been provided by him thus far.

Putting things right

BMF should now go ahead and remove the Cifas marker it has recorded against Mr L's name without delay. But I'm not persuaded that it should compensate Mr L for the impact the marker had on him.

My final decision

For the reasons I've given above, I uphold this complaint and direct Blue Motor Finance Ltd to remove the Cifas marker it has recorded against Mr L's name without delay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 September 2022.

Stephen Westlake

Ombudsman