

## The complaint

Mr and Mrs A complain that Paratus AMC Limited (trading as Foundation Home Loans) (“FHL”) made an entry about them on the CIFAS database in connection with a joint mortgage application.

## What happened

Mr and Mrs A applied for a mortgage with FHL in November 2021. FHL declined the application in September 2021 and left markers on the CIFAS database. The CIFAS database is a cross-industry fraud prevention database which allows financial services providers to share relevant information, subject to safeguards.

FHL said it hadn’t done anything wrong, and that it wasn’t prepared to remove the markers.

Our investigator looked into the matter. He said FHL applied the marker because it wasn’t able to verify the income Mr A had declared in his mortgage application.

In the application Mr A said he worked for a limited company (“E”) that Mrs A is a director of. The application shows that Mr A earned an annual basic income of £46,212.

Our investigator said that Mr A had provided FHL with payslips and bank statements (for an account Mr A holds jointly with Mrs A) in connection with the mortgage application. Mr A’s payslips showed that he earned £785.92 in each of May, June and July 2021. However that didn’t match the entries on the relevant bank statements. Mrs A said that was because E paid £1,200 into their joint account in May 2021. That covered Mr A’s salary and some dividends she says she was owed. E paid the same amount into their joint account in July 2021. Again Mrs A said that some of it was Mr A’s wages and some of it was dividends she was owed. Mrs A says £3,000 was paid into their account in July 2021. She said that was a combination of her wage, Mr A’s wage, and some dividends she was owed.

Our investigator considered this information and the information FHL provided us. He said there were discrepancies in the information FHL received so he couldn’t see that Mr A had received the income he declared on the application. So he thought FHL had reasonable grounds to suspect it had received false information in support of a mortgage application. In the circumstances he didn’t think that FHL had made a mistake when it recorded the information on the CIFAS database, so he didn’t recommend that RBS removed the markers.

Mr and Mrs A remained unhappy and asked for their complaint to be reviewed by an ombudsman, so it has been passed to me to decide. Mrs A says that in the months before and after they applied for the mortgage with FHL in November 2021 they applied for a mortgage with a number of other lenders. All the mortgages were declined, and various markers were applied to cross-industry fraud prevention databases. Mr and Mrs A have complained to the Financial Ombudsman Service about the markers recorded in connection with all those mortgage applications.

Mrs A says the same financial information was provided to all the financial businesses.

However, another of our investigators upheld their complaints in relation to the markers recorded by two of the lenders. In those complaints the investigator said that while he thought the relevant businesses had reasonable grounds to suspect that they'd received false information in support of a mortgage application, Mr and Mrs A had gone on to provide evidence to counter any inconsistencies in their income. So he thought that the markers should be removed and that they were compensated for what happened. However, in cases considered more recently – including this one – a different outcome had been reached.

Mr and Mrs A thought that the investigator in this case should reach a similar conclusion to the one reached complaints where the investigator thought the markers should be removed.

Mrs A has also said:

- since Mr A's income increased in August 2021 he continued to earn what was declared and his income increased again when he changed jobs in March 2022. So Mrs A says there is no on-going risk of potential fraud. Mrs A thinks the markers should be removed in line with the reduction of potential threat.
- she doesn't think FHL had enough evidence to apply the markers. She says she contacted Action Fraud and the police and was told that they didn't think there was enough evidence to prove a crime had been committed or even that this case could be confidently reported to the police.

Mrs A has also told us about the negative impact of the markers on her and Mr A.

### **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 done so I've come to the same conclusion as our investigator. I'll explain why.

When Mr and Mrs A applied for the mortgage in 2021 FHL considered the information and evidence it received in connection with mortgage application and carried out underwriting checks to try to confirm the accuracy of what it was told and to decide whether it wanted to lend. I think it's worth saying here that there was no obligation on FHL to lend money to Mr and Mrs A. It wasn't obliged to give reasons for refusing to do so either.

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 FHL could confidently report the matter to the police or other authorities (whether or not they have 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.

Having weighed up all the evidence and arguments here very carefully, I can understand why FHL had concerns about the information it had been given in connection with the application. The payments E made into Mr and Mrs A's joint bank account don't match the information E disclosed in the mortgage application about Mr A's salary. Mrs A has said that Mr A's salary was paid into the joint bank account along with dividends she was owed from E. I think that's an unusual way for a company to pay an employee's salary. I'm conscious that it would have been very difficult for FHL to verify the information Mr and Mrs A had told them from the information they provided.

In the circumstances I would expect FHL to carry out a further investigation into Mr and Mrs A's mortgage application. Having considered the information they'd provided us with, I think FHL did that before deciding to apply the marker to CIFAS. I can see that they tried to verify the information Mr and Mrs A had provided with a relevant third party but discrepancies were found.

Mrs A has said that she doesn't think FHL had enough evidence to apply the markers. She says she contacted Action Fraud and the police and was told that they didn't think there was enough evidence to prove a crime had been committed or even that this case could be confidently reported to the police.

I appreciate what Mrs A has told us, but it's not clear what Mrs A said exactly, or whether those bodies were aware of all the evidence that I've been provided with when they said what Mrs A says they did.

My role is to consider this complaint on the basis of all the information available to me, to decide whether it was reasonable for FHL to conclude that the standard for making a report was met.

Having considered all the information available to FHL, I'm not persuaded that FHL acted unfairly when it recorded the CIFAS marker.

The next question I need to consider is whether FHL should remove the markers now. Mrs A thinks they should be removed. She says that's because she and Mr A didn't commit fraud, and because the investigator that considered two of her other complaints said the relevant lenders should remove the markers they'd applied and compensate Mr and Mrs A because he thought that they'd provided him with evidence to counter any inconsistencies about their income in the relevant mortgage applications. Mrs A says the same information was provided to all the relevant lenders, so the markers FHL applied should be removed too.

I think it's worth saying here that I'm not bound by the conclusion the investigator reached in those complaints. However, I've considered those complaints, as well as all of Mr and Mrs A's other complaints against the other lenders I've referred to in this decision. I have a wide investigative remit. So my role is to take all the available evidence into account when deciding what's fair and reasonable in this complaint. And I think it's important to note that since those complaints were considered by the investigator, more information and context – including from the other complaints that have been brought – has become available.

Mr A's income increased substantially in August 2021. Mrs A has told us that's because he started working full time with E in August 2021 after working part time before this. She says Mr A continued to earn what was declared in the mortgage application and that Mr A's income increased again when he changed jobs in March 2022.

I've considered the information Mr and Mrs A have provided about Mr A's income in this complaint. That shows that Mr A worked for E until December 2021. I've considered that information alongside the information Mr and Mrs A provided in connection with their other complaints and the investigations the relevant lenders carried out in those complaints. I'm conscious that when the other lenders checked the information provided to them discrepancies were found. And I've also noted inconsistencies between the information Mr and Mrs A gave to the different lenders. In the circumstances I don't think it would be fair and reasonable for me to require FHL to remove the markers.

I appreciate what Mr and Mrs A have told us that the impact of the markers on them and their strength of feeling about this matter. However, I don't think FHL acted unreasonably in recording entries on the CIFAS database. Nor do I think it would be fair and reasonable for

me to require FHL to remove the markers now or to compensate Mr and Mrs A for what happened.

I recognise that this decision is likely be disappointing for Mr and Mrs A. But based on what I've seen, it wouldn't be appropriate for me to require FHL to do anything more to resolve this complaint.

### **My final decision**

For the reasons set out above, my final decision is that that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 10 October 2022.

Laura Forster  
**Ombudsman**