

The complaint

Mr T1, Mr T2 and Mr T3 complain that Clydesdale Bank Plc (trading as Virgin Money) (“Virgin Money”) made an entry about them on the National Hunter database in connection with a joint mortgage application.

What happened

Mr T1, Mr T2 and Mr T3 are brothers. They applied for a new buy to let (“BTL”) mortgage with Virgin Money in 2020. Virgin Money declined the application and left markers against them on the National Hunter database. The National Hunter database is a cross-industry fraud prevention database which allows financial services providers to share relevant information, subject to safeguards.

Virgin Money 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 Virgin Money applied the markers because it had concerns about the information provided in Mr T1, Mr T2 and Mr T3’s mortgage application.

On the mortgage application form Mr T3 declared that he received 50% of the net taxable profit from the limited company (that I’ll refer to as “J”) he ran with his brothers – that reflected his 50% shareholding in the company.

That contrasted with the information set out in an accountant’s certificate dated 22 December 2020 that Mr T3’s accountant sent Virgin Money. That certificate showed that Mr T3’s shareholding in J was 33% in the years ending 30 November 2018 and 2019.

Mr T3’s accountant then sent Virgin Money another accountant’s certificate dated 29 December 2020. That showed that Mr T3’s shareholding in J was 50% in the years ending 30 November 2018 and 2019. Mr T3’s accountant apologised for incorrectly sending the first certificate. He said that was sent because his staff made a mistake. Mr T3 thinks it’s unfair that he and his brothers should be penalised for a mistake made by his accountant that has been explained. He thinks Virgin Money should have asked him and his accountant more questions before applying the markers.

Our investigator said that the records on Companies House show that Mr T3 owned 50% of the shares in J as of 1 November 2017. He said that Virgin Money was also concerned about Mr T3’s deposit. Mr T3 was due to pay a deposit of £205,230 to get the mortgage.

When he applied for the mortgage he said (on the application form) that the source of the deposit was dividends and savings. However, when Virgin Money queried this, Mr T3 said the deposit came from gifts from family and dividends from his business.

Our investigator asked Mr T3 about the deposit. Mr T3 told him that he was self-employed so he got his income from J though dividends. He said that at the time of application he thought he had enough savings to pay the deposit. Later he realised there was a shortfall of around

£30,000, so he got £30,000 from his sister and her husband as a gift to help him pay the deposit. Mr T3 says he was upfront about this with Virgin Money – he sent Virgin Money a letter about that in January 2021.

Our investigator considered everything that had been said and provided in this complaint. But overall he thought Virgin Money had reasonable grounds to add markers to the fraud prevention database. So he didn't think it would be fair to ask it to remove those markers now. However, he did say that he didn't think the reasons Virgin Money used had been accurate when it reported that it had declined the mortgage and applied the markers because of conflicting salary details. He suggested that Virgin Money amended those reasons but Virgin Money declined to do so.

Mr T1, Mr T2 and Mr T3 remained unhappy and asked for their complaint to be reviewed by an ombudsman, so it was passed to me to decide.

For completeness I said that it appeared that Virgin Money added another marker about Mr T3 on the National Hunter database in early 2022. That marker is being considered separately by the Financial Ombudsman Service in another complaint, so I didn't consider it.

My first provisional decision

In my first provisional decision I said:

When Mr T1, Mr T2 and Mr T3 applied for the mortgage in late 2020 Virgin Money 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 Virgin Money to lend money to Mr T1, Mr T2 and Mr T3. It wasn't obliged to give reasons for a refusing to do so either.

When making a referral to the National Hunter database, Virgin Money had to have reasonable grounds for doing so. It didn't have to disclose the detail of those reasons to Mr T1, Mr T2 and Mr T3.

Having weighed up all the evidence and arguments here very carefully, I can understand why Virgin Money had concerns about the information it had been given in connection with the mortgage application. So I understand why it took the commercial decision it did to decline to lend to Mr T1, Mr T2 and Mr T3. However, I'm not persuaded that Virgin Money had enough evidence of fraud to put markers about Mr T1, Mr T2 and Mr T3 on the National Hunter database. I'll explain why.

I can see that Mr T3's accountant has explained why incorrect information was originally provided by him/his office in relation to this application. I'm conscious that the accountant's certificate dated 29 December 2020 (the accountant's certificate Mr T3's accountant said was correct) sets out the income Mr T3 received from J in the years ending 30 November 2018 and 2019. I've considered that information along with the information Mr T3 has sent us from HMRC.

In the circumstances, I don't think it would be fair and reasonable for Virgin Money to add the markers it did on to the National Hunter database solely because it had been sent inconsistent information by Mr T3's accountant. I think there's a reasonable explanation of that and I don't think it's evidence Mr T3 made a fraudulent application.

I can see that Virgin Money also had concerns about Mr T3's deposit when it considered the mortgage application.

Mr T3 has told us that he thought he had enough savings to pay the deposit at the time of application. But he later realised he was short of around £30,000, so he asked his family for the money. It appears that Mr T3's sister and brother in law provided that money. Mr T3 sent Virgin Money a letter about that in early 2021 – around the time Virgin Money had put the markers on the National Hunter database.

I think £30,000 is a significant sum for someone to make a mistake about in connection with a mortgage application and I can understand why Virgin Money was concerned about that. However, I don't think that in itself/that along with the accountant's initial mistake was enough to say that it was fair and reasonable for Virgin Money to add the markers on to the National Hunter database.

Virgin Money has told the Financial Ombudsman about other concerns it had about Mr T1, Mr T2 and Mr T3 – and in the case of Mr T1 and Mr T2, these are the only concerns it has about them individually. In particular, it was concerned about the possible use it thought they might put the property to. I've carefully considered what Virgin Money has said about this. But I'm not persuaded that it has any evidence that amounts to more than assumptions. In the circumstances and having considered all the available evidence in this complaint I'm not persuaded that Virgin Money has done enough to show me that it was justified putting the markers on the National Hunter database. So I think Virgin Money should remove the markers.

Mr T3 has said that he has three buy-to-let properties, one residential property and two successful businesses with his brothers. But at the moment he hasn't set out what (if any) financial loss he has suffered as a result of the markers. I invite him, and Mr T1 and Mr T2, to do so now in response to this decision.

For completeness I will also say here that there has been some discussion about the reasons Virgin Money gave for applying the markers on the National Hunter database. Mr T3 and our investigator have talked about Virgin Money applying the markers because of conflicting salary details. However, I can see that although conflicting salary details have been referred to, the overall reason for the markers is recorded as "inconsistency".

If Virgin Money has more information it wants to share with me to explain why it still thinks it was justified putting the markers on the National Hunter database for this reason it should do so in response to this decision.

The responses to my first provisional decision

Virgin Money sent me information I had already considered before I issued my provisional decision.

Mr T3 said he was very pleased to receive my provisional decision. He said his life has been turned upside down because of the marker. He said his health has been deeply affected. He has been unable to concentrate on running the businesses properly, and family life has been affected too.

He sent me a lot of additional information about the impact of the markers that I considered in my second provisional decision.

My second provisional decision

In my second provisional decision I said:

In relation to the information Virgin Money sent me I remain of the view set out in my

provisional decision. I accept that Virgin Money had concerns about Mr T1, Mr T2 and Mr T3. I can see that it had concerns about the possible use it thought they might put the property to and understand why it took the commercial decision not to lend to them. But I'm still not persuaded that it has any evidence that amounts to more than assumptions. I am not persuaded that the evidence shows that Virgin Money had reasonable grounds for the National Hunter markers.

So I remain of the view that Virgin Money should remove the markers.

I will now turn to the information Mr T3 has told us about the impact of the markers. Mr T3 has told us that the declined application and markers meant that he and his brothers weren't able to buy a property for £665,000 that is now valued at £964,000. He says that means they made a loss of £299,000.

I don't underestimate Mr T3's strength of feeling about that, but I'm not persuaded there was any guarantee that save for the markers Mr T1, T2 and T3 would have successfully bought the property in question for £665,000, and then been able to sell it to make £299,000 profit.

Mr T3 has sent us estate agent screenshots showing how the estimated price of the property has risen. He has also told us about their excellent credit scores. But even if I were to say that it was likely that Mr T1, T2 and T3 would have successfully bought the property in question in 2021 (which isn't clear) I can't be certain what price they would have paid for the property; what Mr T1, T2 and T3's purchase and sale costs would be; their maintenance, tax and mortgage costs while they owned the property; what price they would actually sell it for etc. So I'm not persuaded they made a £299,000 loss on that property. I think any loss they think they made on that property is speculative.

Mr T3 went on to say that the markers meant that Mr T1, T2 and T3 haven't been able to purchase any other BTL commercial properties since the markers were put on their credit files as they were concerned that other lenders wouldn't lend to them. He said their target was to purchase 2-3 properties every year, so they've made huge losses. Again, I understand the point Mr T3 has made, and accept that it's likely that the markers would have made it much more difficult to secure lending on properties. But, even if there were no markers on their credit files, there's no guarantee that they would have successfully bought other BTL or commercial properties in this period. Even if they would have been able to do that, there's no way of quantifying what – if any – Mr T1, T2 and T3's losses would have been.

Mr T3 has also told us that as a result of the markers and Virgin Money declining their product transfer application for one of their BTL properties in early 2022, the interest rate they were paying on the mortgage on that property rose from 1.73% (fixed) to 7.44% variable. He says that has meant that interest repayments went up by more than £6,000 for an 11-month period. Again I understand the point Mr T3 has made, but that application is being considered separately by the Financial Ombudsman Service in another complaint, so it wouldn't be appropriate for me to consider that here.

Finally, Mr T3 has told us that the markers have had a profound impact on Mr T1, T2 and T3 for the last two years. He says they have had sleepless nights, have been struggling to concentrate on anything freely and are terrified to make any decision. I'm very sorry to hear that and can understand why the markers have had such an impact on Mr T1, T2 and T3's lives given that they are in the business of buying and maintaining BTL properties.

Taking this matter as a whole, I think that it's likely that the markers had a substantial impact on Mr T1, T2 and T3's ability to carry on some of their business activities (namely buying new BTL properties) since the markers were applied in December 2020. I accept that the

markers also had an impact on Mr T1, T2 and T3's health and wellbeing. However, it is very hard to quantify the overall impact on Mr T1, T2 and T3. So I think it's fair and reasonable for Virgin Money to pay Mr T1, T2 and T3 £3,000 compensation in total (£1,000 each) to reflect the impact of the markers on them. That amount is in line with the redress the Financial Ombudsman Service awards in circumstances that have had a substantial impact on consumers.

The responses to my second provisional decision

Virgin Money accepted the redress I recommended in my second provisional decision. It has confirmed that it has paid Mr T1, T2 and T3 £3,000 compensation (£1,000 each) and has contacted National Hunter so that the markers can be removed.

Mr T3 responded to say that he is happy with the redress I suggested in my second 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 reconsidered what I said in my second provisional decision with reference to the responses I've received from Virgin Money and Mr T3.

I'm pleased to hear that both Virgin Money and Mr T3 think that the redress I recommended in my second provisional decision is a fair and reasonable way to resolve the complaint. So I see no reason to depart from that redress.

Putting things right

To put matters right Virgin Money should remove the markers it applied against Mr T1, Mr T2 and Mr T3's names in December 2020 on the National Hunter database and pay Mr T1, Mr T2 and Mr T3 £3000 compensation.

My final decision

For the reasons set out above, my final decision is that Clydesdale Bank Plc (trading as Virgin Money) should remove the markers it applied against Mr T1, Mr T2 and Mr T3's names in December 2020 on the National Hunter database.

In addition it should pay Mr T1, Mr T2 and Mr T3 £3000 in total to reflect the distress and inconvenience this matter has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T, Mr T and Mr T to accept or reject my decision before 27 March 2023.

Laura Forster
Ombudsman