

The complaint

Ms S complains that Oplo PL Ltd loaded a fraud marker against her on the National Fraud Database. She'd like the marker removed and compensation for the impact caused to her.

What happened

In October 2022 Ms S made a loan application with Oplo. As part of the application Ms S provided a payslip to Oplo which they believed had been altered. And they decided to load a negative marker on the National Fraud Database.

Ms S wasn't happy with Oplo's decision to load the marker, and complained to Oplo. Oplo reviewed their decision but thought they'd acted fairly in loading the marker.

Ms S wasn't happy with their response so brought her complaint to our service. She explained that because of the marker being loaded against her she's been unable to get a mortgage, had two bank accounts closed and had to take time off work to resolve the complaint.

In January 2023 Oplo made the decision to remove the negative fraud marker against Ms S.

One of our investigator's reviewed Ms S's complaint and thought Oplo didn't act fairly in loading the marker against Ms S. in summary, they thought Oplo should have done more to investigate prior to loading the negative marker against Ms S. And if they'd done so Oplo wouldn't have made the decision to load the marker. Our investigator recommended Ms S be compensated £500 for the impact of the marker on her.

Nether Ms S or Oplo accepted our investigator's recommendation. Ms S asked for a higher level of compensation, and said:

- Oplo breached GDPR
- They didn't respond to her subject access request
- She took 16 days unpaid leave
- She was pre-approved for a mortgage interest rate of 3.9% however was only able to secure 4.74%

Ms S asked for a total of £15,120 compensation.

In summary Oplo said:

- The Payslip didn't match the formatting they expected, or have the logo of the expected organisation I'll call N
- The basic pay didn't match the hourly rate
- They believe they've met the pillars to load a National Fraud Marker

As neither party agreed, the case was passed to me for a decision.

On picking up the case I contacted both parties and explained my thoughts on the outcome of the case. I explained to Oplo why I didn't think they'd met the threshold to load a marker, and to Ms S what she needed to provide to evidence greater impact on her from the marker.

Oplo didn't accept my thoughts. In response they reiterated they thought they'd met the bar to load a negative marker. And therefore they didn't think any compensation was due.

Ms S responded to say she didn't have any further evidence to provide. She highlighted that it wasn't possible for her to get evidence that her mortgage was rejected because of the fraud marker – as mortgage providers don't specify why they reject applications.

As neither party agreed I've proceeded to issue my 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.

Oplo have removed the marker against Ms S. However, the business didn't accept they acted unfairly in initially recording the marker against Ms S. So, I'll need to consider whether Oplo acted fairly in initially recording the marker against Ms S.

The marker that Oplo have filed is intended to record that Ms S has committed application fraud – relating to deliberately supplying fraudulent documentation in order to open an account. In order to file such a marker, Oplo aren't required to prove beyond reasonable doubt that Ms S is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. The relevant rules say:

- *There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous.*

Secondly, Oplo will need to have strong evidence to show that Ms S was deliberately dishonest in their actions. To meet the standard of proof required to register a marker, the business must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain any information provided on account application to understand their level of knowledge and intention.

Having considered the relevant pillars and standard of proof, I'm not satisfied Oplo had *reasonable grounds* to believe that an identified fraud or financial crime had been attempted. Nor do I think the evidence is clear, relevant or rigorous.

I appreciate Oplo may have concerns about the information supplied by Ms S in her payslip, but in my opinion this isn't sufficient to meet the burden of proof to load a marker. Instead I'm satisfied Oplo should have carried out further due diligence and contacted Ms S, or any other relevant third party including her employer. I think if this had happened Ms S would likely have provided further evidence to show the payslip was genuine. And Oplo would have been satisfied the payslip provided hadn't been altered.

For this reason I'm satisfied Oplo shouldn't have loaded the fraud marker against Ms S. It follows I'll need to consider the impact on Ms S.

Subject Access Request (SAR)

Ms S advised she applied for a SAR in January 2023 and Oplo didn't respond. Ms S advised she raised a complaint with Oplo and provided our service with the response. However, if Ms S wishes to pursue her complaint about the SAR not being provided to her by Oplo this will need to be raised as a separate complaint with our service.

Compensation

Our investigator recommended that Oplo compensate Ms S £500. Ms S has advised she'd been applying for Mortgages since October 2022, and thinks these were declined because of the fraud marker. I agree, it's likely a fraud marker would have a negative impact on Ms S's ability to obtain a mortgage - however for me to compensate Ms S directly for this loss I'd need evidence from her mortgage broker, or potential mortgage provider, which outlined the reason the applications were declined was due to the fraud marker. And, I'd need to see the details of the interest rates offered to her at the time, and what's she's been given now. I'm afraid I haven't seen this information – and therefore I can't say Ms S has directly lost out financially by not obtaining a mortgage with a lower interest rate.

However, I am satisfied that Ms S did suffer inconvenience from the loading of the marker, including having two bank accounts closed and experiencing distress which negatively impacted on her ability to work.

Putting things right

For the reasons I've outlined above I think £500 is fair compensation for the distress and inconvenience caused to Ms S.

My final decision

My final decision is I direct Oplo PL Ltd to:

- Pay Ms S £500 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 August 2023.

Jeff Burch
Ombudsman