

The complaint

Mr C complains that Nationwide Building Society incorrectly recorded a marker against him on a fraud prevention database in connection with a mortgage application.

What happened

Mr C was a director and shareholder of a limited company. This company employed Mr C as a manager, and he received a monthly salary paid through the HM Revenue and Customs Pay as You Earn (PAYE) scheme.

In 2023, Mr C decided to relocate and purchase a property in a different area. At the same time, he decided to resign as a director of the company and relinquish his shareholding, but he'd remain employed by the company as his working pattern would allow this.

In September 2023, on the same day that Mr C resigned as a director of the company, he applied to Nationwide for a residential mortgage to purchase a property through a broker. Mr C did this on the basis that he was an employee of the company, and paid a monthly salary. Mr C provided a payslip dated August 2023 as evidence of his income.

Nationwide rejected Mr C's application and recorded a marker with CIFAS, a fraud prevention database. The reason recorded on this report was that Mr C had provided "false employment status".

Mr C complained to Nationwide and asked it to remove the record. He said his employment status was correct. He said he'd been employed by the company since 2021, and he had evidence (payslips, P60 information and bank statements) to show he was treated as an employee.

Nationwide issued its final response in January 2024. It said because Mr C had owned a shareholding of more than 20% in the company, it classed him as being self-employed. It said Mr C should have provided it with "self-employment evidence" rather than the payslip dated August 2023 – because Mr C hadn't relinquished his shareholding until September 2023.

Mr C referred the complaint to this Service and our Investigator didn't uphold the complaint. In summary, she didn't think Nationwide had acted unreasonably in the circumstances.

Mr C didn't agree with the Investigator, so the complaint was passed to me for a final decision. I reached a different conclusion to the Investigator, and I intended to uphold the complaint. I therefore issued a provisional decision to give the parties the opportunity to make any further submissions before I made a final decision.

My provisional decision

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering a mortgage application – like all lenders – Nationwide will review the application and supporting evidence. It considers whether its lending criteria are met, but also carries out various underwriting checks to confirm the accuracy of what it's been told and to decide whether the mortgage would be affordable and sustainable. And where it finds something of concern, it reports that to one of the fraud prevention databases.

The CIFAS database is one of the industry wide fraud prevention databases. It plays a very important role in allowing information sharing about suspected financial crime across the financial services industry – helping protect the integrity of the system.

But for the same reasons, recording an entry about an individual can have serious consequences. And for that reason, there are safeguards. The database's principles for members are published on its website and – amongst other things – set out the standard required for making an entry.

One of the principles says that a member – such as Nationwide – should only make a report where there are "reasonable grounds to believe that a fraud or financial crime has been committed or attempted". And the evidence to support those grounds must be "clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police".

In other words, an entry on the database requires reasonable suspicion of criminal conduct, specifically fraud. There are various fraud offences, but a common feature is seeking financial gain dishonestly.

Having carefully reviewed the circumstances, I don't think it can reasonably be said that Nationwide has shown this threshold has been met.

Nationwide has said its reason for applying the marker was because it had classed Mr C as being self-employed and so he should have provided evidence of self-employed income rather than the payslip he had provided. This is because at the time of the application Mr C had a shareholding and was a director of the company as well as being paid through PAYE.

I don't think that this shows that Mr C misled Nationwide, let alone did so dishonestly. Many directors of companies are also employed by the company and paid through PAYE and taxed as an employee. This is Mr C's situation. In describing himself as an employee, therefore, Mr C accurately described his circumstances – also owning a share of the company didn't make that untrue.

In circumstances like this, Nationwide treats an applicant as self-employed and applies its lending criteria for self-employed customers, rather than its lending criteria for employed customers. But a commercial decision on how it chooses to underwrite a mortgage application doesn't change the underlying position, that Mr C actually was an employee of the company (albeit also a shareholder) and that he did not mislead Nationwide in saying so.

Mr C not complying with Nationwide's lending criteria isn't a crime. Nationwide was entitled to refuse the mortgage application if it wasn't satisfied Mr C had met its lending criteria. But I don't think recording the CIFAS marker because of this was the fair thing to do, given the guidance CIFAS has given to its members. It's not in my view reasonable to say that the standard of proof was met.

Mr C has provided evidence including a payslip and bank statements that indicate he is treated as an employee by the company. So, I'm not satisfied the production of the August 2023 payslip misrepresented his employment status. Mr C considered himself to be an employee of the company and I'm satisfied he was treated as an employee by the company - and therefore I don't consider his actions show any evidence which would give rise to a reasonable suspicion of dishonesty on his behalf.

Given this, I'm not satisfied Nationwide has provided any evidence to show grounds for a reasonable suspicion that Mr C has committed or attempted fraud or any other crime. Nor has it sought to argue that he did so; it has argued that he provided evidence of income which didn't meet its lending requirements.

Considering this, I'm not persuaded in the circumstances that it was fair for Nationwide to record a CIFAS marker.

Putting things right

As I'm not persuaded it was fair to record a CIFAS marker in the circumstances, I'm minded to require Nationwide Building Society remove the entry it has made.

Mr C has told us that whilst the marker being recorded against him hasn't resulted in any financial loss, it has had a major impact on his life because it has severely impacted his ability to get a mortgage. Whilst Mr C hasn't provided any evidence to show any application for lending was submitted and rejected as a direct result of the marker, I think it is more likely than not that he would have experienced some difficulty in securing a mortgage with the marker being recorded against him.

I can also see why he may have decided to delay submitting any further application for a mortgage whilst trying to resolve the matter. So, in any event, I'm satisfied the matter has caused Mr C some inconvenience. Given this, I'm minded to require Nationwide Building Society to make an award of £300 - which I think fairly reflects the distress and inconvenience the matter has caused Mr C."

Responses to my provisional decision

Both parties responded to my provisional decision and confirmed they accepted my findings.

Nationwide has asked Mr C to provide it with his bank account details for the payment of the award of £300 if he accepts this.

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.

After reviewing everything, including all of the surrounding circumstances and the responses I received to my provisional decision, I see no reason to depart from my findings in my provisional decision. I uphold this complaint and I direct Nationwide Building Society to put things right as I've set out below.

Putting things right

For the reasons I explained in my provisional decision, I require Nationwide Building Society to remove any entries it has made on fraud protection databases in connection with Mr C's application.

Also, for the reasons that I set out in my provisional decision, Nationwide Building Society should pay Mr C £300 for the distress and inconvenience the matter has caused.

My final decision

My final decision is that I uphold this complaint and I require Nationwide Building Society to remove any entries it has made on fraud protection databases in connection with Mr C's application. It should also pay Mr C £300 for the distress and inconvenience the matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 November 2024.

Michelle Griffiths
Ombudsman