

## **The complaint**

Mr R complains that Principality Building Society reported him to a fraud prevention database in connection with an application for a mortgage.

## **What happened**

Mr R and his partner applied to Principality for a mortgage to buy a property as first-time buyers. Principality assessed their application and carried out its standard underwriting checks. Having done so, it refused their application. And it made a report about Mr R to CIFAS, a fraud prevention database. The report said that Mr R may have provided “altered documents” in support of the application.

Principality didn’t make Mr R aware of the report to CIFAS. He became aware when his current account provider gave him notice to close that account.

Mr R made a subject access request to CIFAS. CIFAS sent him information about the report. It said that the report said bank statements Mr R had provided in support of his application to Principality had been altered. Mr R asked CIFAS to review the report, and CIFAS said that it had been justified. So Mr R brought his complaint to us.

Mr R said that he hadn’t altered a bank statement. He said that Principality had asked for six months’ proof of income in the form of bank statements. So he had logged into his banking app, filtering the transaction list to show only income. He printed the result out and sent it to Principality. Mr R said that he had not altered any of his income figures and had not acted dishonestly. He had only intended to provide Principality with the information it had asked for. He said that the report had had a severe impact on him – not only had it led to the closure of his bank account but he’d struggled to open another account, and as a young first-time buyer it would prevent him owning his own home.

Principality said that the report was justified and it wouldn’t remove it. So Mr R brought his complaint to us. Our investigator didn’t think it should be upheld so Mr R asked for an ombudsman to review his complaint.

I then made some further enquiries. Following that, Principality said it had now reviewed the case and decided to remove the marker. But it still didn’t think it had done anything wrong by recording it in the first place.

## **My provisional decision**

I issued a provisional decision setting out my thoughts on the complaint. I said:

“Prevention of fraud in the financial services industry is an important matter. The fraud prevention databases – like CIFAS – play an important role in allowing information to be shared across the industry to help combat and prevent fraud. This includes sharing information about suspected fraudulent applications and fraudulent use of financial services.

However, the consequences for an individual of having an entry recorded about them on the databases can be serious. So there are standards which have to be met before an entry is justified. CIFAS's principles for its members – which includes Principality – say that a report should only be made where there is clear, relevant, and rigorous evidence giving reasonable grounds to believe that fraud has been committed or attempted. This amounts to a requirement for reasonable suspicion of criminal conduct – there are several different fraud offences, but a common feature is dishonestly seeking to obtain financial gain.

In this case, Principality made the report about Mr R because it concluded, at the time, that he may have dishonestly altered the bank statements he provided in support of his mortgage application to evidence his income.

In fact, he didn't do that. I'm satisfied that the evidence now shows that there was no dishonesty on Mr R's part, and that he did not alter his bank statements or set out to mislead Principality.

What happened was that Principality asked Mr R for six months' worth of bank statements to evidence the income he'd declared on his mortgage application. This was a reasonable request; lenders are required to verify income.

Rather than print out six months' worth of full statements from his bank's online banking portal, Mr R used the "filter" option to show only his salary payments, printed the result out and gave it to Principality. The result was a single page, with the bank's logo and Mr R's account details at the top, and then six lines – each showing a date, an amount paid in and the source of the funds, and an account balance. Each line showed a salary payment consistent with the amount and source Mr R had declared in his application.

Principality checked what Mr R had given it with his bank. The result of the check was that the information Mr R had given Principality didn't match the information held by the bank. This led Principality to conclude that the document had been altered, and led it to add the entry to the CIFAS database.

In fact, though, Mr R hadn't altered the document. It was a true and accurate picture of the conduct of his bank account and showed genuine, unaltered transactions.

The problem was not the payments themselves, but the account balance shown on each transaction line. Because Mr R had filtered the transactions, the account balance shown on each line was the balance immediately following that transaction. But they were not the only transactions Mr R made on those days (he had bills going out, and often also transferred or withdrew money once his salary had been paid in, as well as other day to day spending). That meant that the daily account balance – at the end of the day, taking into account all transactions on that day – was not the same as the account balance shown on the individual transaction lines. The transaction balance was the balance immediately following that transaction, without factoring in other transactions later the same day. When Principality tried to verify the information it had been given with Mr R's bank, therefore, it found a discrepancy between what the bank said the account balance was and what the document Mr R had given it said the account balance was. It was comparing the transaction balance with the daily closing balance – and therefore didn't obtain a match.

This is not therefore evidence that Mr R had dishonestly altered the figures on the document he gave Principality. At most he gave incomplete information in providing only the salary transactions not the full statements – but the information he did give

was not altered, let alone dishonestly altered. Mr R genuinely believed he was answering the question he had been asked in the most straightforward and practical way.

I've verified that this is what happened. Principality now accepts this too, and that's why it has now agreed to remove the marker. I've obtained Mr R's full bank statements directly from his bank. The transactions – including the account balance following the transactions – shown on the document Mr R gave Principality completely match the information shown on the bank statements. I also asked Mr R's bank to check that the document was genuine and accurate and it confirmed it was.

I'm therefore satisfied that there was in fact no dishonesty or intention to mislead or defraud on Mr R's part. He was asked a question, and he gave a genuine and accurate answer to that question.

But that's not the only thing I have to consider. It's not enough to be satisfied now that Mr R didn't set out to defraud Principality. I also have to decide whether Principality acted fairly and reasonably, based on what it knew at the time, in concluding that it did have grounds for reasonable suspicion.

I'm not persuaded that it did. I don't think it can fairly be said that there was clear, relevant and rigorous evidence giving rise to a reasonable suspicion that Mr R had made a fraudulent application. There was clearly a misunderstanding, but I think that, acting fairly, Principality ought to have carried out further checks before reporting Mr R to the database. Had it carried out those further checks, it would have found that there was an innocent explanation for the discrepancy it had identified.

I've also borne in mind that, since Mr R's application, CIFAS has given guidance to its members that the checks Principality carried out aren't enough, of themselves, to justify a marker. That guidance was given after this case and so couldn't have been taken into account when Principality made its decision. But the fact that it was considered necessary to emphasise to members that discrepancies of this sort don't amount to sufficient evidence supports my conclusion that it wasn't – even if this specific guidance hadn't yet been issued, there was still an obligation on Principality to satisfy itself that the standard had been met.

Even before this specific guidance, it was ultimately Principality's responsibility to satisfy itself that it had, in the particular circumstances of this case, clear relevant and rigorous evidence of fraud – and I don't think there are reasonable grounds on which I can conclude that it did. It should in my view have considered whether there might have been an innocent explanation for the discrepancy and carried out further checks – not leapt to a conclusion that there was fraud without doing more.

I'm therefore satisfied that it wasn't fair and reasonable for Principality to have reported Mr R to CIFAS. I'm pleased to see that it has now agreed to remove the marker, which should prevent it having any future impact on Mr R. But I also think it needs to compensate him for the impact the marker had while it was in place.

Mr R says that it's meant that he's been unable to get a mortgage, and has to continue living in rented property. I can see that the presence of a marker means that he would be unlikely to be accepted for lending – but I don't have enough evidence to say that without the marker he would have been able to get a mortgage. His application to Principality wasn't fully underwritten, because it was rejected when Principality identified the discrepancy with the evidence, before the evidence was considered for lending purposes. Without the discrepancy, Principality might have

lent to him, or it might not. It's also difficult for me to conclude that, had Principality turned his application down on legitimate underwriting grounds, another lender would have lent. I think there's just too much uncertainty for me to be able to say that it's more likely than not that he would have been able to obtain a mortgage but for Principality's mistake.

However, the marker did still have a big impact on Mr R. It made him feel that there was no prospect of him owning his own home. It's also prevented him applying for other forms of finance. As a young man establishing his own life and family, that was significant.

The marker also led his bank to close his current account. I've checked this with the bank, and it's confirmed that it did close the current account because of the marker. It's also said that had it known what it now knows, it wouldn't have done so – because it agrees that Mr R gave accurate information to Principality and doesn't think, as a result, that there's credible evidence Mr R was involved in fraud.

I think the closure of Mr R's bank account was the consequence of Principality's actions in unfairly reporting Mr R to the database – the bank was reasonably entitled to rely on the entry once it was there. It's fair and reasonable to hold Principality, not the other bank, responsible for this. It had a substantial impact on Mr R both of itself, and also because he then struggled to open a new bank account elsewhere.

Taking all that into account, and taking into account what Mr R has said about the stress and upset he has been caused over two years in trying to get the marker removed, as well as the impact of knowing it was there, I think compensation of £1,000 fairly reflects his distress and inconvenience.

Finally, Mr R incurred solicitors' fees of around £1,900 having instructed solicitors to represent him in his complaints to CIFAS and then to us. He would like Principality to refund those costs. I've thought carefully about that, but I'm not persuaded to require it to do so. Our rules do allow us to award the costs of professional representatives, but make clear that it's rarely appropriate to do so.<sup>1</sup> Making a complaint is not a legal process requiring professional representation; it's designed to be informal and straightforward. And I also bear in mind that while I've upheld this complaint I've done so because of my own investigations rather than because of any particular argument or evidence advanced by the solicitors. On balance, I'm not persuaded that it was necessary for Mr R to instruct solicitors to complain, and so I don't intend to award the costs of doing so."

## **The responses to my provisional decision**

Mr R didn't make any further points.

Principality did not agree with my provisional decision. It said:

- Mr R had previously complained to CIFAS, which had carried out its own review and confirmed the marker did meet the standard of proof. It's not fair to hold Principality to a higher standard of proof than that applied by CIFAS itself.
- Mr R did alter the information he provided – he edited it to show only income, which is suspicious in itself. Even if not dishonest, it was not a true and complete

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<sup>1</sup> "In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service, so awards of costs are unlikely to be common." – DISP 3.7.10 G

representation of his account and he only gave Principality what he wanted it to see.

- Principality followed the correct process at the time, and was unable to verify the information Mr R provided, which is why it recorded the marker. While the process may have changed since, it did nothing wrong at the time. It's not fair and reasonable to rely on a later change in process to say that Principality acted unfairly at the time.
- The presence of a CIFAS marker does not automatically mean future lending applications will be turned down – lenders are required to assess applications on their merits. If Mr R has been turned down for new accounts or lending, those are complaints to be directed to those firms, not Principality.
- The same is true of the decision of Mr R's bank to close his current account. Principality is not responsible for the decisions of another firm.
- I had suggested that Principality had acted unreasonably in loading the marker – yet that the bank had acted reasonably in closing Mr R's current account in reliance on it. That isn't consistent.
- My provisional decision was unfairly based on hindsight, and wasn't consistent with the investigator's original view of the complaint.

### **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 also considered again my provisional decision, and Principality's further arguments in response to it. But, having done so, I haven't changed my mind.

It's true that I reached a different conclusion to the investigator. But that is how the process is supposed to work – an investigator tries to resolve a complaint informally, but if either party is dissatisfied they can ask for it to be formally decided by an ombudsman. The ombudsman reviews everything afresh to reach their own decision and is not bound by the investigator's conclusions. In this case, I carried out substantial further investigations following the investigator's initial review, and therefore my decision was based in part on evidence not available to him. There's no unfairness in me reaching a different conclusion – provided (which I have done) I give the parties a further chance to comment before reaching a final decision.

I also don't agree that my decision was based on hindsight. It's true that it was based on information discovered in the course of our investigation. But, as I said in my provisional decision, Principality ought to have carried out further checks at the time before adding the marker to the database. Had it carried out those checks, it would have found what we have found now.

While Mr R filtered the transaction history of his online banking, I remain satisfied that he didn't do so dishonestly. He was asked for evidence of his income being paid into his bank account, and that's what he provided. What he gave Principality was accurate and not dishonest.

To add a marker, there has to be a reasonable suspicion of fraud – which includes dishonesty. I'm satisfied that Mr R wasn't in fact acting dishonestly. I'm also satisfied that Principality ought, acting reasonably, to have carried out further checks before concluding that there was a reasonable suspicion of dishonesty amounting to criminal conduct. As a

provider of banking facilities as well as mortgage lending, Principality ought to have understood the difference between a transaction balance and a daily balance, and carried out further checks to understand whether the discrepancy was because Mr R had altered the figure dishonestly, rather than because of a difference between the question it asked and the answer it received.

I don't suggest that Principality ought to have had regard to the guidance CIFAS later issued to its members – clearly it could not have done so before that guidance had been issued. But I do think that the fact that CIFAS found it necessary to remind members that discrepancies of this sort should not lead to markers without further checks shows that a failure to verify in these circumstances did not meet the required standard of proof. Even in the absence of definitive guidance on this specific issue, it was for Principality to satisfy itself that the standard of proof had been met, and I don't think it can reasonably be said that it was met in this case.

I've only seen the outcome of CIFAS's investigation into Mr R's complaint. I don't know what evidence it had available or took into account. And in any case, I'm not bound to reach the same outcome, provided I'm satisfied, based on all the evidence available to me, that my outcome is fair and reasonable in all the circumstances. For all the reasons I've given, including in my provisional decision, I am satisfied of that.

While it's correct that a CIFAS marker shouldn't be an automatic barrier to future lending, I'm aware that in most cases most lenders will refuse to lend where there is a marker. In any case, I'm not making an award for financial loss based on any specific refusal. My award is for compensation for non-financial loss resulting from the distress, inconvenience and loss of reputation flowing from the marker being in place – including that Mr R felt deterred from making applications.

In setting the level of the award, I'm satisfied it's also fair and reasonable to take into account the distress and inconvenience caused by the closure of Mr R's bank account. Principality didn't close the account. But the bank has confirmed that it closed the account because of the marker – and, if it had known what it now knows about the circumstances leading to Principality recording the marker, it would not have done so. I'm satisfied that it wasn't fair for Principality to record the marker, and I'm satisfied that the marker led directly to the closure of Mr R's bank account, and that that wouldn't have happened without the marker. While Principality didn't close the account, it was responsible for the marker which triggered the closure, and to that extent this is consequential loss. I think it's reasonable for that to be a factor in the level of award I make.

Mr R hasn't made any further representations about the level of my award for non-financial loss, or about any financial loss he wants me to take into account.

I therefore remain satisfied that my proposed award is a fair way to resolve this complaint, for all the reasons I've given both here and in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint and direct Principality Building Society to:

- Remove all entries made to fraud prevention databases in respect of Mr R's mortgage application; and
- Pay Mr R £1,000 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 December 2024.

Simon Pugh  
**Ombudsman**