

The complaint

Miss H complains that Startline Motor Finance Limited ('SMF') recorded an adverse fraud marker against her name.

What happened

As both parties are familiar with the circumstances of this complaint, I have summarised them briefly below.

In August 2021, Miss H entered into a finance agreement with SMF to purchase a car. In November 2023 SMF terminated that agreement after it discovered Miss H had sold the car to a third-party without its consent, and in breach of the agreement.

SMF requested that Miss H make full repayment of the debt owed, but Miss H said she was unable to as she'd already spent the funds she'd received from the sale of the car. She did however agree to continue making repayments as previously agreed.

SMF applied a default to Miss H's credit file and recorded an adverse fraud marker against her name on the Cifas database. Miss H was unhappy with this and complained, but SMF didn't uphold that complaint: it said it had acted corrected. Miss H remained unhappy, so she brought her complaint to this service for an independent review.

An Investigator considered the evidence and testimony provided by both parties and concluded:

- The default was applied correctly – as Miss H had breached the terms of the agreement and not settled the full balance.
- The Cifas marker wasn't applied fairly – as the evidence didn't support the assertion that Miss H intended to commit fraud.

Miss H agreed with the Investigator's assessment, but SMF did not. In summary, it found there to be sufficient information that Miss H knowingly sold the vehicle—in breach of her agreement—without the intention to repay the full balance.

As SMF have disagreed with the Investigator's assessment and recommendations, the matter has now been passed to me for a final decision to be made.

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.

The only dispute now outstanding on this complaint is regarding the Cifas marker SMF loaded against Miss H.

Having considered the evidence provided by both parties, I find this wasn't loaded fairly. Nor do I find SMF has sufficiently demonstrated the marker ought to be retained on the Cifas

database: I'll explain why.

One of the relevant considerations here is set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous.

My interpretation of these standards is that a member cannot simply load a marker against an individual based on mere suspicion. It must be able to meet a higher bar; in that a customer was likely a witting participant in the alleged conduct. This has been supported by subsequent guidance issued by Cifas to its members.

It's not in dispute here, by any party, that Miss H sold the car subject to the finance agreement, or, that it was a breach of the terms of that agreement. But breaching the terms of an agreement cannot reasonably be deemed a fraudulent act. For me to be persuaded that Miss H likely set out to defraud SMF, I'd have to be presented with evidence that supports the likelihood she intentionally breached her agreement for financial gain, or to cause a loss.

While SMF has correctly pointed out that it was clearly stipulated in Miss H's agreement that the car belonged to it and not her—she therefore had no legal right to sell it—this doesn't automatically prove she dishonestly did so. Miss H told SMF, and our service, that she didn't realise she was unable to sell the car. And I see no reason to disbelieve this testimony. In fact, I find it's supported by some of the actions taken by Miss H.

SMF has provided our service with its customer contact notes with Miss H. Despite a number of requests from our Investigator to provide copies of the relevant calls associated with these notes, SMF hasn't provided these. I will therefore rely upon the information I do have from these notes.

The notes reveal that Miss H made SMF aware of her intention to sell the car as early as 4 August 2023. But these notes do not include any advice given by SMF that it would be in breach of the agreement, or unlawful, to do so. Miss H seems to have told SMF again on 9 August 2023 that she was in the process of selling the car and then finally on 25 August 2023 that it was sold. Again, I can see no notes that she was ever advised she was unable to do this until after she'd confirmed with SMF that the car had been sold.

I find it unlikely that had Miss H intentionally set out to defraud SMF that she would have put it on notice about those intentions. And in the absence of any information that she was told this was against the terms of the agreement, or that it would not permit such an act, I can't say this supports SMF's assertion Miss H acted dishonestly.

SMF has also made submissions that Miss H failed to pay off the full balance—in line with the agreement—once the vehicle was sold. But again, this doesn't prove a dishonest intention. Miss H continued to engage with SMF and make the repayments she had agreed to make. This doesn't persuade me that Miss H sold the car with no intention to repay SMF the balance owed.

Overall, I'm not persuaded that SMF has been able to demonstrate that it met Cifas' burden of proof when loading the marker. And I'm not persuaded it has provided our service sufficient evidence to demonstrate the marker ought to be retained. In short, I don't find it

has sufficiently shown that there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.

Putting things right

Miss H has explained to our service that the Cifas marker applied caused her a great deal of worry and stress; this is because she currently holds a position that requires vetting.

While her position hasn't been impacted by the marker placed by SMF, the worry of this potentially impacting her is sufficient, in my view, to warrant a payment of compensation for the distress and inconvenience caused.

I concur with the Investigator's recommendations that SMF should pay Miss H £100 for the worry caused by the unfair loading and retention of this adverse marker.

My final decision

For the reasons I've given above, I uphold this complaint and direct Startline Motor Finance Limited to:

- Remove any adverse fraud markers recorded against Miss H.
- Pay £100 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 18 April 2025.

Stephen Westlake
Ombudsman