

The complaint

Mr S complains that Nationwide Building Society unfairly registered a CIFAS marker against him, after he'd applied for a mortgage which was declined.

What happened

Mr S is represented in this case, but I will refer to Mr S only throughout, for ease. Mr S applied to Nationwide through a broker for a joint mortgage, in June 2023. The mortgage was declined and Nationwide registered a CIFAS entry, following concerns it had about the information Mr S had provided about his employment and income.

Mr S applied for a mortgage with Nationwide again in October 2023, through another broker. He provided fundamentally the same employment and income information, and this application was also declined.

Mr S contacted Nationwide in March 2024 asking it to remove the CIFAS marker. Nationwide wasn't prepared to do this and treated the matter as a complaint. It issued a final response letter dated 18 April 2024 in which it said it hadn't done anything wrong and wouldn't be removing the marker.

After making a Data Subject Access Request, Mr S wrote to Nationwide again in July 2024 asking for the CIFAS marker to be removed. He said it was apparent from the records he'd obtained that Nationwide ought to have carried out further enquiries in relation to the concerns it had about his stated employment, including asking him about the concerns it had, before registering the marker. He provided a letter from a Director of the firm he'd recorded on the mortgage applications as being his employer, which he said supported this position.

He also said that Nationwide hadn't made a Fair Processing Notice available to him when it should. And that Nationwide was invited to comply with its Consumer Duty obligations.

Nationwide didn't change its stance and following a further exchange of correspondence on the matter, Mr S referred his concerns to the Financial Ombudsman Service. An Investigator here issued an assessment of the case. In summary, they said they thought Nationwide has acted fairly when it registered the CIFAS marker. They also said that the Consumer Duty wasn't relevant to the complaint, because Nationwide had registered the marker before the Consumer Duty had come into force.

Mr S disagreed with the outcome. He emphasised that Nationwide hadn't done enough to ensure it could rely on the information given to it over the phone by his stated employer. And that the letter he'd provided from a Director of his stated employer, supported this and meant Nationwide should remove the marker.

As the matter couldn't be resolved, it's been passed to me to make a final 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.

Having done so, I've reached the same overall outcome as the Investigator and for broadly the same reasons. Before I explain why, I want to set out the purpose of my role. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint.

For that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having considered all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint.

I need to decide two things in this complaint:

- Was Nationwide acting reasonably when it registered the CIFAS marker following the mortgage application in June 2023?
- Is Nationwide acting reasonably in not agreeing to remove the marker, following the representations made by Mr S?

Was Nationwide acting reasonably when it registered the CIFAS marker?

According to the National Fraud Database Principles, a CIFAS marker should only be registered if the following applies:

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;*
3. *The conduct of the Subject must meet the criteria of one of the Case Types;*
4. *In order to file the member must have rejected, withdrawn or terminated a Product on the basis of Fraud unless the member has an obligation to provide the Product or the Subject has already received the full benefit of the Product.*

Mr S's arguments relate to items 1 and 2. He says that Nationwide didn't do enough to check that the person Nationwide spoke to at his stated employer was in a position to provide accurate information about his employment. He says the letter written in July 2024 by a Director of the same firm, supports this where it states that the person Nationwide had spoken to over the phone was "*totally unaware of Mr S's upcoming employment as they had not had any interaction as Mr S had dealt with (name of employee) on my behalf*".

Mr S also says Nationwide should've given him the opportunity to provide an explanation, before it proceeded to register the marker.

Nationwide says it was entitled to rely on the information it obtained, that led to it registering the marker and that it was correct to do so.

Having considered this matter carefully, I'm not persuaded by Mr S's arguments. The Director's letter of July 2024 carries very little weight, because the actual knowledge of the person Nationwide spoke with at the stated employer, is not relevant to the question of

whether Nationwide acted fairly in relying on what it was told. In essence, Nationwide was seeking to check whether Mr S was (as he had stated was the case) an employee of the firm detailed in the mortgage application. There's no indication that the person Nationwide spoke with felt unable to respond to the query raised or that someone else would be better placed to respond to the query.

With that said, I consider that it might've been appropriate for Nationwide to have engaged with Mr S about what it had found to get his input, before registering the marker. However, even if I were to conclude this, I find that it doesn't make a difference to the outcome of the complaint. I say this because there is no dispute that Mr S wasn't in fact employed where he said he was, when the application was made in June 2023. He had provided as part of the application a contract of employment indicating an employment start date before the mortgage application was submitted. He hadn't notified Nationwide of any delay to his employment starting.

I also note that when Mr S applied again for a mortgage with Nationwide in October 2023, he said he was working for the same employer in the same role, earning the same salary. The Director's letter of July 2024 confirms that Mr S has never worked for the firm he twice said he did.

With these things in mind, I can't reasonably say it's likely that the overall situation in terms of a marker having been applied, would've been different had Nationwide engaged with Mr S, before it registered the marker in June 2023. Taking everything into account, I don't find that Nationwide acted unreasonably in registering the CIFAS marker.

Has Nationwide acted reasonably in not agreeing to remove the marker, following Mr S's representations?

Much of the analysis above is relevant to the question of whether Nationwide's decision not to agree to remove the CIFAS marker, was fair.

This includes the Director's letter of July 2024 setting out that Mr S was never employed by the company he had twice said he was when making mortgage applications.

In terms of the 'Fair Processing Notice' point raised, Nationwide says that Mr S would've been provided with the relevant notices about how his data would be used, as part of making the mortgage application. I haven't been provided with any evidence to the contrary.

Overall, I consider Nationwide has acted fairly here as well.

Finally, Mr S has mentioned the Consumer Duty and suggested that Nationwide hasn't complied with its obligations under the Duty.

The Consumer Duty came into effect for 'open' products on 31 July 2023. It builds on the rules and guidance that already existing before the Duty was introduced, with the aim of strengthening consumer protection and promoting good consumer outcomes. As the Investigator set out, the Consumer Duty wasn't in force when Nationwide took the decision to add the CIFAS marker. It was however in force when Nationwide declined to remove the marker, and is therefore a relevant consideration for me to take into account.

I've taken Consumer Duty into account alongside all other relevant rules and guidance when deciding this case. And having done so, I am not persuaded it leads me to conclude that Nationwide has treated Mr S unfairly for the reasons I've explained above.

Nationwide's responsibility to provide good outcomes for customers does not prevent it from applying CIFAS markers when necessary or that it must agree to Mr S's request in this individual case.

My final decision

My final decision is that I don't uphold Mr S's complaint about Nationwide Building Society.

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

Ben Brewer
Ombudsman