

complaint

Mr and Mrs B complain that Bank of Ireland (UK) Plc added Mr B to the Credit Industry Fraud Avoidance System ("CIFAS") database after the bank refused their application for a new mortgage. Mr and Mrs B want the bank to remove the fraud marker against Mr B from the CIFAS database.

background

Mr and Mrs B had a mortgage with Bank of Ireland and wanted to port it. The bank had concerns about the new mortgage application which resulted in the refusal of the application and Mr and Mrs B were unable to port their existing product. Mr and Mrs B brought a complaint to this service about the refusal. We didn't uphold that complaint. The bank was also concerned that this was a fraudulent application and reported Mr B to CIFAS.

Mr and Mrs B signed a mortgage application dated 12 July 2017. Mr B completed a section on his income and employment. Mr B had a job that lasted for four years and finished in February 2017. Mr B got another job in March 2017 with a firm I shall call "Firm A". Mr B said that he was getting a yearly salary of £30,000 in that job and didn't have another source of income.

As proof of income Mr B produced his contract, payslips and his bank statements to the end of June 2017. The bank lodgements didn't match the pay-slips. Mr B's wages were paid by the faster payments transfer method. There was also a large payment into the bank account in June 2017 for work Mr B did overseas, not part of his stated employment. This was not disclosed in the section related to other income on his mortgage application. Mr B's mortgage application was dated 12 July 2017. Mr B's employment in this job finished at the end of July 2017. Mr B didn't alert the bank to this on the relevant section of the mortgage application (section 50).

Our adjudicator felt that in order for the bank to put a fraud marker against Mr B it should be in a position to make a formal complaint to the police that his behaviour amounted to a fraud.

Our adjudicator's view was that the bank was not in a position to do so and so recommended that this complaint should be upheld. Bank of Ireland disagreed and said that it considered that this was an appropriate referral to CIFAS and asked for a review.

my first provisional decision

I noted that Mr and Mrs B had made an application to the bank for a mortgage on 6 July 2017. Mr B said he was employed by Firm A for four months. Mr B said he started work with Firm A in the middle of March with a basic salary of £30,000. Mr B said he had no other income. Section 50 of the application also asked for information about future events that might affect Mr and Mrs B's income. The only event referred to was a possible increase in Mrs B's income. There wasn't any reference to Mr B's leaving his employment which occurred at the end of that month.

I noted that as proof of income, Mr B produced to the bank a number of payslips:

1. Payslip to 15 April 2017 which showed gross pay of £2,500 and net pay of £1,973.60.

2. Payslip to 15 May 2017 which showed gross pay of £2,500 and net pay of £1,973.40.
3. Payslip to 15 June 2017 which showed gross pay of £1,250 and net pay of £1,123.40.

I recorded that Mr B also produced his bank statements for the period to 30 June 2017 showing lodgements from Firm A to his bank account. I noted that those lodgements didn't agree with the pay-slips but showed the following:

1. Lodgement from Firm A of £2,522.44 on 18 April 2017.
2. Lodgement from Firm A of £2165.40 on 15 May 2017.
3. Lodgement from Firm A of £931.40 on 15 June 2017.

I said that the bank statements also showed income from another source:

- £3,375 on 12 May 2017.
- £577 on 19 May 2017.
- £1,224.02 on 6 June 2017.
- £4,999.00 on 6 June 2017.

Mr B had told us that he took a break from his employment with Firm A for a short period and this explained the additional self-employed income that he got in May and June. But I noted that Mr B hadn't referred to this additional income or work in the mortgage application.

When the bank reviewed the documentation it saw that there were discrepancies between the payslips and the lodgements and that Mr B had failed to disclose his self-employed income on his mortgage application. So, the bank concluded that rather than being employed by Firm A, Mr B was likely to have been self-employed or a contractor. As such, Mr B would have had difficulty getting a mortgage as the bank would require three years accounts if Mr B was self-employed and 12 months accounts if he were a contractor, neither of which Mr B would have been able to produce.

I noted that Mr B had produced evidence in the form of a letter from a director of Firm A dated 28 April 2018 to explain why the lodgements differed from the payslips. But the bank questioned the validity of this letter as Firm A went into administration some time ago and the letter is from a director of the company and not the administrator. I said that I wondered about the authority of the director to issue this letter but at that stage I was prepared to consider the contents of it.

The letter and an accompanying document said that that there was payroll confusion in the firm so that the money paid to Mr B each month was incorrect and the payslips referred to above showed what Mr B should have been paid. My understanding was that these payslips were not the payslips Mr B would have got when he got paid, but were produced sometime later and for some reason backdated.

I said that If Mr B was employed, he would have got a payslip each month which would have been different to the payslips he produced to Bank of Ireland. I asked Mr B for these but he told me that *"I did not receive payslips that match what went into my bank"*. The bank suspected that Mr B was self-employed and that he didn't receive a monthly salary. If Mr B didn't receive payslips on a monthly basis that matched the lodgements from Firm A to his bank account, I said that I didn't consider that suspicion to be unreasonable.

I noted that Mr B got income from another source in May and June for work done abroad. I asked Mr B why this wasn't declared on the application form which asked at question 37 "Do

you have any other income?” Mr B said that he thought this question, as it was phrased in the present tense, had to do with recurring /repeating income such as an additional part-time job. Mr B says that he may have answered the application differently if he had been asked *“Have you had any other income?”*

I said that my experience of mortgage applications is that if the applicants had other income of £10,000 they would have wanted to put that on the application in order to maximise the chances of getting a mortgage. I said that one explanation for not doing so is that Mr B was genuinely confused by the tense of the question. But I said that an alternative explanation was that Mr B may not have wanted to draw attention to his self-employment as he was making an application based on being employed.

I noted that the bank refused the application and referred Mr B to CIFAS for application fraud. Mr B had obtained the CIFAS entry dated 31 August 2017 by way of a subject access request. The CIFAS referral mentioned a material falsehood in the application and that the proof of income was forged, manipulated or stolen. Mr B accepted that the payslips he produced to back-up his application aren't payslips that he got each month. I said that in my view they were produced at a later date and don't show a true picture of the income Mr B was getting each month from Firm A. That suggested to me that the proof of income was being manipulated to induce the bank to give Mr B a mortgage and that Mr B was likely to be self-employed or a contractor. For that reason, I considered that it was reasonable for the bank to report Mr B to CIFAS. So, subject to any further evidence or submissions I received from Mr and Mrs B or from Bank of Ireland I said my intention was not to uphold this complaint and I issued a provisional decision to that effect.

my second provisional decision

I then received further submissions and evidence from Mr B which caused me to alter my opinion and so I issued a second provisional decision. Mr B had raised a number of objections to my findings which were briefly:

- Mr B had a contract of employment with Firm A which is a legally binding document and I hadn't referred to the significance of it in my provisional decision.
- Mr B submitted an email from a director of Firm A attaching all the payslips she had on file.
- In respect of the large payment he received in June 2017, Mr B says it was a one-off and he simply didn't consider disclosing it.
- Mr B said that he made no reference in his application for a mortgage in July to leaving his employment at the end of July as *“I walked out of my job with no notice due to a number of circumstances”*

I noted that attached to Mr B's submissions were a further set of payslips which I assumed had been provided to him by the former director of Firm A as the former director referred in an email to Mr B to attaching payslips. As part of this bundle I noted that I now had two payslips for March/ April 2017. One was for £2,522.44 dated 31 March 2017 which seemed to have been the original payslip and which wasn't previously provided to me. The other was dated 15 April 2017 which was an amended payslip and which I referred to above. The payslip dated 31 March 2017 matched what was paid into Mr B's bank account on 18 April 2017.

So, I said that the payslip of 31 March 2017 suggested that Mr B did, in fact, contrary to what he had told us, receive payslips that matched what went into his bank but for some reason hadn't retained them and didn't supply them to the bank. I noted that in the email from the

former director she asked Mr B where these other payslips were and if he hadn't got them filed. I said that I believed that as this payslip came from the former director, it seemed that Mr B hadn't retained it from March 2017.

Given this new information I asked Mr B for his P45 when he left Firm A. Mr B supplied this to me. The P45 was dated 15 January 2018 and said that Mr B left work with Firm A on 31 July 2017. It gives the employers PAYE reference number and notes that Mr B was employed for five months and that he earned £9,886.09 on which tax was due of £1,018.00. I noted that these latter figures are the same figures which appeared on Mr B's final pay-slip from Firm A dated 15 August 2017. I said these additional documents pointed firmly to the conclusion that Mr B had indeed been an employee of Firm A.

So, I believed that following receipt of this additional evidence that it was likely that Mr B was in fact employed by Firm A when he made the application for the mortgage. I asked the bank whether this changed its view about the CIFAS registration. The bank replied saying it hadn't changed its view for the following reasons:

- There were inconsistencies with the income provided by Mr B at the time of application.
- Mr B didn't disclose that he was contracting in his application form in response to Question 37 on the form.
- The P45 confirms that Mr B was in his notice period at the date of application but didn't disclose that at Question 50 of the application form.

I said that I had looked at these objections, I noted that the bank didn't disagree that the P45 was strong evidence for believing that Mr B was employed by Firm A. The bank made the point that if Mr B left employment at the end of July, then according to Mr B's contract, which he said was legally binding he would have been working his notice period. I noted that Mr B said that despite his legally binding contract he walked out without giving notice. I said that I had to recognise that in Mr B's industry and indeed others that it wasn't uncommon for employees to leave without giving notice. I said it may well have been that at the time Mr B made the mortgage application that he intended remaining in this employment and he had changed his mind after that.

I noted that Mr B didn't disclose his income from self-employment. It seemed unusual to me that he didn't. Mr B had provided an explanation for that which is that the job he did was a one-off and this wasn't recurring income. So, he said that he didn't think it relevant to his mortgage application. I said that I had to re-consider my view of this given that I now accepted that Mr B was employed. I said if Mr B had been in self-employment with Firm A, he might have wanted to hide his self-employment elsewhere as it could have led to further enquiries from the bank. But I believed that if Mr B was employed there was no advantage to him in hiding his self-employment. I said that I believed that in those circumstances it was reasonable to accept that Mr B had no fraudulent intention in not disclosing his self-employment. My view was that if the work was a one-off as he described it, it was entirely understandable that he hadn't declared it as it wouldn't be repeated and available for any future mortgage payment.

I said that because of the further information I had revised my view of this complaint. I had thought that it was reasonable for the bank to report the matter to CIFAS because I believed that Mr B hadn't been employed by Firm A. But I said that because of the new evidence I believed that Mr B was in fact employed. I believed that Firm A gave Mr B payslips that matched what it paid him each month but these payments and payslips contained errors through the fault of Firm A's payroll department.

To remedy the error, Firm A produced a further set of pay-slips. Mr B had given these payslips to the bank although they didn't match what he got paid each month. I said that I believed that those payslips, together with Mr B's failure to declare his self-employed income led the bank to reasonably conclude that Mr B hadn't been employed and was involved in the fraud of pretending to be so employed to get a mortgage.

But, I felt that the additional evidence which hadn't been available to the bank when it reported the matter to CIFAS suggested that Mr B was an employee and not involved in fraud. So I said that I believed that the bank should now withdraw its CIFAS marker. I noted that the bank had raised the issue that by not declaring that he was working his notice Mr B had acted fraudulently when applying for the mortgage. But Mr B said that he didn't actually give any notice and I said that I had no evidence that contradicted that. So I couldn't fairly say that the information Mr B had given to the bank about his employment intentions at the time of the mortgage application was misleading.

So, I said that subject to any further submissions I received from Mr and Mrs B or the bank my intention was to uphold this complaint and order the bank to remove the CIFAS marker. My view was that as, until had I received the recent additional evidence, I believed that it was reasonable for the bank to register the CIFAS maker, I wasn't going to require the bank to pay any compensation to Mr and Mrs B.

my findings

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

Both Bank of Ireland and Mr and Mrs B have made further submissions and provided further evidence which I have considered. The bank says that Mr B made false representations at the point of application with the intent of making a gain for his benefit. My view of the evidence is that when Mr B was originally paid, he got a payslip which matched what went into his bank account. But there were errors in the payroll and to rectify those errors his employer issued a set of replacement payslips. When asked by the bank to produce payslips Mr B produced the replacement payslips which of course didn't match what was paid on a monthly basis into his bank account.

The bank's concern was that Mr B was self-employed or a contractor and was trying to get a financial advantage by producing wage-slips which misrepresented his true employment status. The bank says that it considers that Mr B dishonestly made false misrepresentations in order to obtain a mortgage and so was guilty of fraud. But the evidence from the P45 is that Mr B was employed so the production of the payslips didn't misrepresent his employment status. Nor can I say that Mr B was dishonest by producing the replacement payslips that he had been given by his employer. I imagine that any employee in Mr B's position would probably have done the same. I don't consider that Mr B's actions show any dishonesty on his behalf.

I have as I have said above considered other matters which the bank had concerns about in relation to the application including Mr B not declaring some self-employed income and not declaring that he would leave his employment shortly afterwards. I have dealt with those matters in my second provisional decision and the bank has not produced any further evidence that would alter my view. The bank says that Mr B had an alternative way to

proceed to have his complaint heard through CIFAS undertaking an independent review. But Mr and Mrs B are entitled to bring his complaint to us for such a review which I believe we have undertaken.

Mr and Mrs B have also made a number of submissions and outlined the very personal difficulties they have faced as result of the CIFAS marker. They believe this marker shouldn't have been put on and should have been removed earlier if the bank had listened to them. I understand the difficulties Mr and Mrs B have faced. My view was that the from information available to the bank when it made the referral to CIFAS that it was reasonable for it to conclude that it was a fraudulent application. Mr B's position was, as I've recorded above was that he didn't get payslips that matched what went into his bank account.

But that wasn't in fact the case. Late on in our investigation Mr B's former employer produced such a payslip. Because of that I have been able to make further enquiries as a result of which I am satisfied that Mr B was an employee rather than self-employed or a contractor. My belief is that even if the bank had made further enquiries from Mr B, it may well have concluded as I did in my first provisional decision that it shouldn't remove the marker. For that reason I don't believe that a compensatory award is appropriate in this case. But for the reasons I have outlined in my second provisional decision and here I uphold this complaint and so will order the bank to withdraw any adverse information it provided to CIFAS on Mr and Mrs B's mortgage application.

my final decision

My final decision is that I uphold this complaint and order Bank of Ireland (UK) Plc to remove any adverse information it provided to CIFAS in relation to Mr and Mrs B's mortgage application.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 January 2019.

Gerard McManus
ombudsman