

## Complaint

Mr W complains that Yorkshire Building Society has registered a fraud marker against his name. He wants it to remove the marker.

## Background

Mr W had a residential mortgage with YBS which he redeemed in 2015.

Mr W complained to YBS in October 2016. He said that he had found that YBS had recorded information about him with the Credit Industry Fraud Avoidance Scheme ("CIFAS"). The marker was due to "misuse of property". He asked YBS to remove this warning.

YBS didn't uphold Mr W's complaint. It said:

- In April 2008 Mr W completed a residential re-mortgage with YBS on Property 1;
- At the time of the application he declared he had been residing at the property for the past 2 years and that this was his main residence. He declared that Property 2 was a buy to let property and provided evidence of rental income;
- As part of the anti-money laundering requirements he provided YBS with a copy of his passport and a bank statement showing he lived at Property 1;
- He had made a number of enquiries over the years about letting the property. In 2015 he called and requested a letting application;
- During the period of the letting enquiry some checks were carried out. Mr W was found to have come off the electoral roll at Property 1 in October 2008, which YBS felt, was an indication that the property had been let for a significant period of time.
- Mr W's letting application was received in May 2015 but was later declined due to inconsistencies identified;
- In addition, in May 2015 Mr W submitted an application to a business in the YBS group for the buy to let (BTL) mortgage of Property 1. The information in this application highlighted several inconsistencies between the YBS mortgage account and the new application in relation to Mr W's address history and the time Property 1 had been let out.
- Mr W's details had been loaded to CIFAS for "misuse of property" on the basis that he had been letting the residential mortgage account for a number of years and although he had several opportunities to inform YBS of this he failed to do so.
- No credit grantor who had access to information on CIFAS would automatically refuse credit to the person named – Mr W shouldn't be denied credit purely on the basis that his details had been loaded to CIFAS.

Mr W wasn't happy with YBS's response, and brought his complaint to this service. But our adjudicator didn't agree that his complaint should be upheld. He said, in summary:

- Mr W had confirmed he was letting out Property 1, which had a residential mortgage without consent to let, from early 2013. His BTL application in 2015 suggested that this may have been happening from as early as 2011. In addition, Mr W hadn't been on the electoral roll for Property 1 for any of the period concerned;
- Renting out a property with a residential mortgage on it is breaking the terms and conditions of the mortgage and a lender may well consider this to be fraud;
- Mr W said he felt YBS's actions were heavy handed, but our adjudicator felt that YBS was accurately reporting to CIFAS what had happened.

Mr W didn't agree with the adjudicator's conclusions. He said in particular;

- He didn't sign the BTL application;

- Mortgage fraud is the intent to materially misrepresent or omit information on a mortgage loan application, and but he had provided YBS with proof that Property 1 was his home address at his initial application.

The adjudicator responded and said:

- The application form appeared to be an online form prepared by Mr W's broker. If Mr W had concerns about the content of that form they should be addressed to the broker. In such a format no signature is required at such an initial stage;
- YBS is recording the fact that Mr W was letting out a property which had a residential mortgage secured on it. Mr W had confirmed that he had done this in his letter to this service.

As agreement has not been reached Mr W's complaint has been referred to me for a final decision.

### **My findings**

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 don't find that YBS has done anything wrong. I'll explain why.

Mr W has admitted that he let the property without telling YBS. And he also agrees that he told YBS on a number of occasions that it wasn't let. But he feels that YBS has been heavy handed in placing a marker against his name. He says that he made a mistake in not checking the terms and conditions of the mortgage when he moved out. He says that he didn't tell YBS about the letting sooner as he was worried YBS would call the loan in at short notice. And he disputes that he was letting the property for as long as YBS says.

As the adjudicator has explained, renting out a property with a residential mortgage without the lender's consent is a breach of the terms and conditions of the mortgage, and a lender may consider this to be fraud. I'm persuaded that Mr W should have been aware that this was a term of his mortgage. And I note that Mr W admits he told YBS he wasn't renting the property when he was.

When YBS became aware of inconsistencies in the information Mr W had supplied, it reported the issue to CIFAS. It is required, as part of its membership of the scheme, to place a marker with CIFAS in these circumstances.

I appreciate that Mr W disputes the information given in the BTL mortgage application supplied by his broker. He says in particular he didn't sign this. But this was not the only information YBS took into account in reaching its decision. And, having considered all the evidence supplied to this service, I don't think YBS has made a mistake or acted unfairly. So I won't be asking it to remove the fraud marker.

**My final decision**

My decision is that I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 June 2017.

Alison Cribbs  
**Ombudsman**