

complaint

Mr I complains that FirstRand Bank Limited, trading as MotoNovo Finance ("MotoNovo"), were wrong to place a Credit Industry Fraud Avoidance System (CIFAS) marker against his name.

background

I issued my provisional decision on this complaint in July 2020. I explained that I was intending to uphold Mr I's complaint but that I'd consider any further responses either he or the business wished to provide before 20 August 2020. An extract from that provisional decision is set out below.

MotoNovo reported a CIFAS marker against Mr I's name as they suspected he had tampered with the odometer on a car he was leasing through them. They'd noticed that the mileage recorded during an MOT in December 2012 was about 600 miles less than it was during an independent inspection of the car that had taken place in July 2012; five months earlier.

Mr I was upset they'd added the marker. He said he hadn't tampered with the odometer and MotoNovo's decision to register a marker with CIFAS had caused him significant problems. He'd lost his job as an accountant and been unable to maintain his accreditation with a chartered accountant's association. He said he'd had his bank account closed; a credit card rescinded and had been denied a mortgage.

Unable to resolve matters with MotoNovo he referred his complaint to this service and our investigator provided his opinion. He did not think there was clear evidence the odometer had been tampered with. He noted that a further independent inspection had been completed in February 2013 and that the inspector had explained there was no evidence of the odometer being disturbed. The inspector had gone on to explain that it was possible to change the mileage without removing parts using modern methods. So, he concluded that the odometer reading was incorrect because either the odometer was defective, or it had been adjusted by a specialist.

The investigator also noted that in internal email in April 2013 MotoNovo said, "appears no evidence of tampering ...". So, he thought there'd been an acceptance then that there wasn't sufficient evidence the odometer had been tampered with.

He thought the fairest solution was for MotoNovo to remove the CIFAS marker. Pay Mr I compensation of £2,000 in respect of the impact on his personal and professional life and compensate him for loss of earnings.

He noted that Mr I started work as an accountant in November 2017 and his contract was terminated when the CIFAS marker was identified in February 2018. He'd been earning £30,000 a year at that point and had subsequently provided information that he was now earning £9,575 per year. He thought in the 15 months since Mr I had lost his job it was clear he'd lost earnings of £17,632 which he said MotoNovo should therefore pay to Mr I.

MotoNovo didn't agree with the investigator's view. They said there was sufficient evidence the odometer had been tampered with and they explained that when reviewing the MOT history of the car they had noted that during the 2015 test the odometer hadn't been

readable. They said this meant the car should not have passed the MOT - but somehow it had.

MotoNovo went on to consider the compensation the investigator had suggested. They doubted the provenance of the letter of termination from Mr I's employer. They said there was no header or footer and that it didn't confirm the reason for the termination of Mr I's contract with them. They didn't think it was reasonable to suggest, on the basis of this letter, that there was evidence Mr I's contract had been terminated because of the CIFAs marker or that there was sufficient evidence of his income in that employment. They therefore asked for a final decision by an ombudsman.

my provisional findings

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

Whilst I agree with the investigator's findings I don't currently agree with the way in which he's suggested MotoNovo compensate Mr I. Please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

were MotoNovo right to report a CIFAS marker?

There's no doubt there is a discrepancy in the odometer readings. I say that because:

- The mileage recorded at the MOT in December 2012 and at the retest MOT a few days later was lower than the mileage recorded during the independent inspection on 2 July 2012 where a photograph of the odometer reading was taken.
- Whilst it is possible the mileage was recorded incorrectly during the MOT I think it becomes less likely that it was recorded incorrectly twice as I see the mileage recorded for the retest for the MOT, completed a few days later, was also lower than the mileage recorded during the independent inspection on 2 July 2012.
- On 9 January 2013 Mr I's photograph of the odometer showed the mileage to be 75,250 which is also less than the mileage the odometer was showing in July 2012.
- The trip meter reading on 2 July 2012 was 2092 miles and on 9 January 2013 was 890. That suggests the trip meter has been reset at some point between those two dates and the mileage covered was at least 890 miles. But the odometer shows a mileage covered of only 169 miles.

So, it's clear there is a discrepancy in the odometer readings.

The National Fraud Database Handbook sets out the burden of proof required for members to record information with CIFAS. Amongst other things it says that "the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject to the police".

So, a business can't apply a CIFAS marker because it suspects fraud. For MotoNovo to report a CIFAS marker against Mr I, they would need to have sufficient evidence to back up their allegation and identify a criminal offence. They'd have to be able to demonstrate the odometer had been "clocked" by Mr I, or with his knowledge.

I can see they asked an independent engineer to provide a report on whether the odometer had been tampered with. His inspection took place on 8 February 2013. He said:

"...there does appear to be a discrepancy between the odometer readings. The actual cause cannot be established at the time of our visit and specialist diagnostic testing will need to take place ... by a suitably equipped dealer". And ...

"...there appear to be two likely causes: 1- the odometer system is defective, it's interesting to note as far as we are aware that this has not been reported and the trip did not appear inaccurate during our testing..." 2- the odometer system has been altered by a suitably qualified equipped specialist to alter the mileage for reasons not clear..."

Having reviewed the odometer readings provided from before the 2 July 2012, including the previous MOT mileage reports, they seem consistent. I think it's therefore clear that the mileage was therefore either clocked between 2 July 2012 and the MOT date of 7 December 2012, or that the odometer failed in this period.

The independent engineer explained that "The actual cause cannot be established at the time of our visit and specialist diagnostic testing will need to take place ... by a suitably equipped dealer". This further specialist diagnosis did not take place and I am therefore not persuaded that MotoNovo had enough evidence to eliminate the potential that the odometer may have failed.

Having considered MotoNovo's system notes I think it's clear that their assessment of whether a CIFAS marker should be reported was not based on the independent expert's evidence but was based on the mileage discrepancy that had been identified. I can see that in response to the message our investigator noted (above), where MotoNovo had suggested (in April 2013) there was "...no evidence of tampering..." a further internal message clarified that they believed there was. But that message explained the reason for that was the disagreement in the odometer and trip meter readings. There was no consideration of the expert's view and I think, if there was, MotoNovo would have wanted to obtain a further specialist diagnosis to exclude the possibility the odometer had failed.

But MotoNovo didn't do that and I'm therefore not persuaded that they had enough evidence to suggest Mr I had clocked the car. In those circumstances I don't think it was fair of them to report the incident to CIFAS.

what compensation should Mr I receive?

I've asked for more information so that I could calculate Mr I's loss more accurately and that's led me to suggest a slightly different redress than the investigator had proposed.

I'll consider each area of loss separately.

loss of wages

Mr I was engaged as an accountant in November 2017. He's provided a copy of that contract.

His contract was terminated on 9 February 2018. The reason given was that he "failed to adhere to disclosure requirements". I understand that MotoNovo dispute the provenance of the letter of termination.

Mr I has provided information from HMRC that demonstrates he was working for the company in question and that the employment terminated on 9 February 2018.

I asked Mr I for a bank statement for the period in question and I have seen payments from the company including a payment made on 23 February 2018 which I'm persuaded is likely to be the final payment and is what I'd expect the termination payment would be after tax was deducted.

So, I'm persuaded that Mr I did have a job as an accountant that was terminated on the grounds that he hadn't adhered to disclosure requirements.

No further information has been provided to explain what those disclosure requirements were. So, it may be that the disclosure was not related to CIFAS.

But I think it's most likely it was. Mr I has explained that he wasn't aware of the CIFAS marker before it was raised by his employer. I don't think an employer would be inclined to offer an accountant a role if he had an active fraud marker against his name. I'm persuaded this would have given cause for the business to terminate Mr I's contract. I'm also persuaded that no other CIFAS markers were registered against Mr I's name at that time as he's provided evidence from CIFAS of that.

And, if it wasn't the reason why the contract was terminated, I think it's still likely the marker would have prevented Mr I from obtaining work in the accountancy sector in which he was trained. And I think it's reasonable to suggest, if the CIFAS marker hadn't presented a bar to employment, Mr I could attract a salary of £30,000 a year as that was the value of the contract he had that was terminated.

Mr I has provided information to show that he has been working as a taxi driver. He also provided a copy of his 2018-2019 tax return which showed a gross income of £8,000.

I'm persuaded that he was therefore earning £22,000 per year less after the CIFAS marker was applied. Mr I lost his job in February 2018 and the CIFAS marker was removed in May 2019, a 15-month period.

So, it would appear that his loss of income as a result of the CIFAS marker being applied was about £27,500. But I don't think it would be fair to tell MotoNovo to pay Mr I all that money.

I say that because I don't think £8,000 is an average wage for a taxi driver of Mr I's limited experience and in his location. The average salary for a taxi driver in the UK is £19,783 (source PayScale) and the range of salaries is from £12,000 to £39,000.

I think Mr I's earnings potential wouldn't have been in line with average earnings because I note he works in a city where I'd expect earnings to be lower than the UK average. I'd also

expect him to earn quite a bit less than average because he was a new taxi driver. I think a reasonable expectation would have been about £15,000 per year.

Mr I's earnings may have been limited for other reasons such as a choice to work less hours or an unavailability of hours. But I don't think the income level being below £15,000 is as a result of the CIFAS marker. I'm persuaded that it was likely Mr I could have earned £15,000.

I think MotoNovo should pay Mr I the difference in the income he was able to earn as an accountant less that he could have earned as a taxi driver and over a 15-month period. I calculate that as £18,750 (£15,000 loss per year over a 15-month period).

membership of chartered accountant's association

Mr I has explained that he decided not to renew his membership of this association because he didn't think he'd be approved due to the CIFAS marker. I'm not persuaded there's evidence of any loss here as a failure to renew doesn't appear to demonstrate loss of earnings.

bank accounts

I've seen a letter, dated 31 October 2018, from a bank Mr I was applying for an account with. The bank refused his application and referred him to CIFAS. Whilst it's not explicitly mentioned I think it's clear from the letter that the application has been refused because of CIFAS information. I think that most probably refers to the CIFAS marker MotoNovo applied, as I've been provided with no other reasonable explanation.

I don't think this is evidence of financial loss, but I do think it's evidence Mr I has been inconvenienced by MotoNovo's actions.

I've seen a further letter from a bank with whom Mr I had an account. This is dated 10 May 2019 and is from the fraud department. It explains the bank's decision to no longer offer an account to Mr I.

I'm not persuaded this is evidence of financial loss either. I'm supported in that finding because I can see the account balance was zero at the time the bank wrote to Mr I.

I do however, think it's further evidence of inconvenience caused to Mr I.

mortgage

Mr I has provided evidence of a mortgage offer that was made to him in June 2018. He says this was later withdrawn as a result of the bank becoming aware of the CIFAS marker. I've not seen evidence that that was the reason for the mortgage being withdrawn so I don't think it would be reasonable to consider that was the case.

other issues

Mr I has explained that there have been other problems as a result of the CIFAS marker, but he's not provided any further evidence, so I've been unable to consider those issues.

the redress

I've thought about what proportionate compensation would be given the evidence of the impact the CIFAS marker has had on Mr I.

Mr I says he wasn't aware of the CIFAS marker when he accepted the employment contract in November 2017. So, it seems he could not have experienced any loss before that time.

As I've explained above I'm persuaded that fair compensation for loss of income would be £18,750.

But, as I've also explained above, Mr I has been significantly inconvenienced by the presence of the marker. It would clearly have been very distressing to have learnt of the presence of the CIFAS marker and to lose his job on the basis of that. It seems there's also been some loss of reputation as he's not been able to work in the sector in which he's qualified. So, I've considered what would be reasonable compensation for distress, inconvenience and loss of reputation and I think, in all the circumstances, a further payment of £2,000 would be fair.

my provisional decision

For the reasons I've given above I'm expecting to tell FirstRand Bank Limited to pay Mr I;

- *£18,750 in respect of loss of earnings as a result of the inaccurate reporting of the CIFAS marker;*
- *£2,000 to compensate Mr I for the distress, inconvenience and loss of reputation he's experienced;*
- *they should also ensure that all record of the CIFAS marker is removed.*

Neither party provided any further information.

my findings

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

As no further evidence was provided I've not found any reason to change my provisional decision.

my final decision

For the reasons I've given above I uphold this complaint and tell FirstRand Bank Limited to pay Mr I;

- £18,750 in respect of loss of earnings as a result of the inaccurate reporting of the CIFAS marker;
- £2,000 to compensate Mr I for the distress, inconvenience and loss of reputation he's experienced;
- they should also ensure that all record of the CIFAS marker is removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 24 September 2020.

Phil McMahon
ombudsman