

complaint

Mr Z complains that Skipton Building Society made an entry against his name on the CIFAS fraud prevention database when it declined an application he made for a buy to let mortgage.

background

Mr Z applied, through a broker, for a buy to let mortgage in 2014. Skipton refused the application.

Some years later, in 2018, Mr Z was advised to check the CIFAS register. He made a subject access request and found that Skipton had registered an entry for “application fraud” in connection with the mortgage application.

Mr Z complained. Skipton removed the marker, explaining that it had reviewed the circumstances of the application following his complaint.

Mr Z complained to us. He didn't think removing the marker was enough. He wanted substantial compensation. He said he had been planning to expand his business around that time. But he hadn't been able to because he had been refused credit to buy transport and equipment. He said he'd lost out on bigger contracts – and profit – as a result. And he said other banks and building societies had refused him mortgage applications and closed or refused to open bank accounts. He hadn't understood why until he found out about the CIFAS entry, but the problems with his finances over the years had caused him significant financial loss and had affected his health.

Our investigator recommended upholding the complaint and said Skipton should pay Mr Z £1,000 compensation. Neither party was happy with that. Skipton said that while it wouldn't place the entry on the register now, it had done so in compliance with its policy at the time. So it didn't think the complaint should be upheld at all. And Mr Z said the compensation didn't go nearly far enough to recognise the impact on him – or take into account his financial loss.

my findings

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

I think the first thing to say here is that mortgage lenders don't have to accept applications, and are entitled to refuse to lend, as long as the decision's not made on grounds that are unfair or unlawful. And there's no obligation to give reasons for a refusal. In any case, the lending decision itself isn't the subject matter of this complaint, so I'm not going to comment on Skipton's lending decision.

As any lender does, Skipton considered all the documentation Mr Z's broker provided and considered the outcome of its various underwriting checks. That consideration not only led it to refuse the lending – it led it to place an entry on the CIFAS database, and it's that entry that's the subject of this complaint.

It's unfortunate that Skipton hasn't been able to give a consistent explanation of why it placed the entry. At first, it told our investigator that it was because it appeared Mr Z was

receiving the rent for a different buy to let property he hadn't declared. Mr Z told the investigator that property belonged to his parents, who gifted him the income from it.

Skipton then said that wasn't the reason for the entry. It said it was because of inconsistencies in Mr Z's income which it wasn't able to verify using its standard checks. It said that at the time, it was its policy to record a marker when information couldn't be verified. But now it doesn't do so without making further investigations. It followed its policy at the time, so it doesn't think it acted unfairly – and it removed the marker, in line with its current policy, once Mr Z challenged it.

I accept that Skipton followed its policy at the time. But I don't think that's the end of the matter. An entry on a fraud prevention database is a serious step. It suggests that a lender believes an applicant has committed fraud.

CIFAS now publishes principles for its members. One of the principles says that lenders should only record entries on its database when the standard of proof is met – the standard is that the lender should have reasonable grounds to believe a crime has been committed such that the matter could confidently be reported to the police (though it's not a requirement that a report actually be made). It applied a similar test at the time Skipton placed the entry on the register.

Bearing that in mind, and bearing in mind what's fair and reasonable in all the circumstances, I don't think it was fair for Skipton to have recorded an entry in 2014. While it couldn't verify what Mr Z had told it, I think it could have done more, once it learned that, to try to find out whether that was a result of a genuine error or a fraudulent application, or some other reason. I don't think Skipton has shown that the evidence it had in 2014 was sufficient to reach the threshold of being able to make a justifiable report of fraud to the police. And while its policy was to make a report to CIFAS at the time, as it's since said one of the reasons it changed the policy was because it came to understand it wasn't correct.

That being the case, I now need to decide what Skipton needs to do to put matters right. I've considered what Mr Z has said about his financial losses. But I don't have enough evidence to say that Skipton is responsible for them.

I don't know why other lenders refused his applications and closed his accounts. But a marker on the database should not lead to an automatic refusal – lenders must still make their own checks and make their own decisions. I don't have any evidence of what decisions the other banks and building societies made or why they made them, so I can't fairly say that the refusals were because of Skipton's marker – or that, but for the marker, Mr Z's applications would have been granted.

I've seen Mr Z's business plan. It shows his projected income. But there's no guarantee that would come to pass. And to the extent Mr Z was prevented from expanding his business because of a lack of access to credit, as I've said I can't fairly say that this was because of Skipton's marker.

However, it's clear that discovering the marker has caused Mr Z substantial distress. I've taken his health conditions into account – and even while I don't have evidence they were caused by Skipton's actions, I do think they meant learning about it had a particular impact on him. In all the circumstances, I agree £1,000 is fair compensation.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Skipton Building Society to

- Pay Mr Z £1,000 compensation; and
- If it hasn't done so, remove external fraud markers from Mr Z's name

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 7 December 2019.

Simon Pugh
ombudsman