

## **complaint**

Mr P complains FirstRand Bank Limited unfairly recorded a CIFAS marker against his name. CIFAS is the UK's fraud alert service. FirstRand Bank operates in this case under its Motonovo Finance brand.

## **background**

In June 2015 Motonovo Finance agreed to provide a car under a hire purchase arrangement in Mr P's name. As is common, Motonovo Finance didn't deal direct, but through a dealership acting as its agent.

Shortly afterwards, Motonovo Finance received a direct debit with account details in the name of a Mr M. Mr M was known to Mr P, but in August 2015 the holder of the account from which the direct debit payments were to be made disputed setting up the direct debit. At around the same time, the car was seized by the police, for reasons unconnected with the finance agreement; Mr P wasn't driving it at the time. In September 2015 Motonovo Finance demanded repayment under the hire purchase from Mr P – on the grounds that he'd abandoned the car.

Mr P said that he hadn't taken out the hire purchase agreement and hadn't set up the direct debit instruction. He said that Mr M was a former tenant of his, who had been responsible for this and other fraudulent activity using his name, address and other details.

Motonovo Finance didn't believe that Mr P wasn't involved and placed a CIFAS marker against his name. Mr P complained about the marker. Motonovo Finance said that the dealership had checked photographic identification documents and made credit checks and was satisfied that Mr P had himself applied for the finance. It believed that Mr P had changed the direct debit details and that the details he had provided were fraudulent. It felt the CIFAS marker had been recorded correctly.

Mr P complained to this service, and one of our investigators considered his complaint. The investigator didn't consider however that Motonovo Finance had treated Mr P fairly; in short, he didn't think that it had done enough to show that Mr P – rather than being a victim of fraud – had been a perpetrator. He recommended that Motonovo Finance arrange for the removal of the CIFAS marker and that it pay Mr P £300 in compensation.

Mr P was broadly in agreement with the investigator's recommendations, although he felt the level of compensation was too low. Motonovo Finance, however, didn't accept what the investigator had said and asked that an ombudsman review the case.

## **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, however, I've reached broadly the same conclusions as the investigator, and for similar reasons.

There's no real dispute here that there was a fraud (or attempted fraud) in connection with the finance application. Either someone took out the finance using Mr P's details and without his knowledge or consent, or he took it out and then set up a direct debit using someone else's account details without their knowledge or consent.

As the investigator noted, CIFAS rules say it's for Motonovo Finance to show that it was justified in arranging for the fraud marker to be placed against Mr P's name. In effect, then, it must show Mr P took out the finance and then arranged for the payments to be made from the account of someone who hadn't agreed to that. That doesn't mean that Motonovo Finance has to demonstrate that Mr P has committed fraud, still less that it must do so to the standard of proof required in criminal proceedings. It does need to show however that it has more than a suspicion that he was involved.

I agree with the investigator that Motonovo Finance hasn't done that. All it's really said is that the checks carried out when the finance agreement was taken out were enough to lead the dealership to think it was dealing with Mr P. But the information that appears to have been supplied to the dealership was information that would have been readily available to someone in Mr M's position; it's likely too that they could have provided documentation to support the application in Mr P's name.

Mr P has provided information showing that he was the victim of impersonation involving other providers at around the same time. Other providers have accepted that. Whilst that doesn't mean that he was a victim here of course, it's relevant background in my view. Mr P has provided evidence too to show that he wasn't living at the address on the finance agreement at the time – although he did still own that property. And I note too that he wasn't driving the car when it was stopped by the police, and has shown that he had a different car on a different finance arrangement.

It is of course possible that Mr P used his former address and that he had more than one car at the time. But I don't believe I need to decide whether or not he took out the finance agreement with Motonovo Finance. Rather, I need to decide whether Motonovo Finance has done enough to show that it was justified in placing the CIFAS marker against his name. In my view, it hasn't done that.

As I've indicated, the investigator thought that a payment of £300 was appropriate, to recognise the inconvenience to which Mr P has been put and the distress he's suffered. Mr P thought this was too low. However, whilst I note that the CIFAS marker has been in place for some time and that Mr P has gone to some effort to explain why he thinks it's unfair that it was ever placed, I agree with the investigator that a payment of £300 is reasonable here.

**my final decision**

My final decision is that, in order to resolve Mr P's complaint, FirstRand Bank Limited should arrange for the removal of the CIFAS marker against Mr P's name and pay him £300 in recognition of the distress he's suffered and the inconvenience to which he's been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 June 2020.

Michael Ingram  
**ombudsman**