

complaint

Mr M complains that Yorkshire Building Society ("YBS") unfairly put him on the Credit Industry Fraud Avoidance Scheme ("CIFAS") database.

background

Mr M has various buy-to-let ("BTL") properties, and in 2004 he remortgaged one of these ("29a") from a different lender to YBS. The application was submitted by a mortgage broker and said Mr M would be living in the property. The application form also said there'd be no other occupiers over the age of 17, and that Mr M was remortgaging his existing residential property ("F") onto a BTL basis.

A day later Mr M put in another remortgage application with a different lender in which he said he lived at a different address ("43") and that he would be remaining there; that is, it was a straight residential remortgage from one lender to another.

The following year Mr M applied for a BTL mortgage with another lender and within that he said he lived at another address again ("66") and had done so for over four years, but that he spent weekdays at 43, using it as a base as it was nearer to his work.

After these various lenders merged they had access to each other's information, and these discrepancies in the information Mr M had provided over the years came to light. YBS asked Mr M for proof of residency. As Mr M didn't provide satisfactory information YBS put a marker on CIFAS in relation to his 29a application.

Our adjudicator didn't recommend that this complaint should be upheld as he thought the evidence pointed to Mr M never having lived in 29a. Mr M disagreed and so it's been passed to me to decide.

my findings

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

The issue here is that YBS believes that Mr M always intended 29a to be a BTL property. On the other hand, Mr M says that he intended to live in the property when he remortgaged it in 2004. He says he intended to live in it with his girlfriend, but the relationship didn't work out so he decided to let the property instead. He says he told YBS of this over the phone and in writing and it's not his fault YBS didn't record the information. And as he was a young, single man enjoying life he didn't chase it up.

Firstly I think it's important to say that whilst Mr M may have been a single man enjoying life, he was also in his 30's and employed as a regional manager for a financial services company. He had over 20 BTL properties and was a director of his own company managing this portfolio. So he wasn't naïve in terms of financial matters; nor, more specifically, was he un-versed in mortgage and property matters.

There are a lot of inconsistencies in the information Mr M has provided over the years which have only come to light when his different mortgage lenders have merged with each other; so they now have access to the information he provided to each of them separately.

In terms of this mortgage on 29a Mr M has said he was changing it from a BTL to a residential property as he was going to live there with his girlfriend. He says that as the relationship didn't last he then decided to rent it out. But the mortgage application form asked the names of anyone over the age of 17 that would be resident in the property (other than Mr M) and Mr M didn't declare anyone. So, according to the mortgage application form he signed, he would be living in the property on his own. If, as he now says, he intended to live in the property with his girlfriend then it's reasonable to conclude he would have declared that on the application form.

In his application Mr M made to a different (but now linked) lender a day later said he lived at 43 and was keeping that as his primary residence. Mr M has explained this, saying he kept a room at 43 as his weekday crash-pad. Our adjudicator asked why Mr M needed a room at 43 still if he was moving into 29a as they're in the same road, in fact just over 100m apart. Mr M said he'd used 43 for a number of years and it worked well, so he'd kept it in case moving in with his girlfriend didn't work out.

But choosing to keep a room but not intending to use it as you'd be living 100m away with your girlfriend, is very different from carrying out a full remortgage on the property and declaring that you *will* be living there which is what Mr M did a day after he applied for the mortgage on 29a. In addition in the application Mr M made the following year to a different (but now linked) lender he didn't declare any residency at 29a, instead saying he'd lived at 66 for over four years, using 43 as a base during the week. There was no mention on this application of him living at 29a and prior to that at F, which is what he'd declared on the 29a remortgage application.

Mr M hasn't said how long he was resident at 29a before he rented it out and, despite the opportunity to do so, hasn't provided any evidence of his residency. Mr M has made much of using 66 (his parents' address) as a postal address, saying that's why he can't provide anything showing he lived at 29a. But even if he used a different postal address any utility bill or council tax demand would state what the property address in question is, even if it was addressed elsewhere. For example the electricity bill might be posted to Mr M at 66, but it would then include text within the bill to state the account holder is Mr M and the address the electricity is being supplied to is 29a. That would indicate that Mr M was responsible for the utility bills at the property which would support his claim he was living there, albeit for only part of the time.

Finally, Mr M has said he phoned and wrote to YBS to tell it he'd moved out of the property so it's the lender's fault this information wasn't recorded. Having reviewed all the contact information there's nothing to show any phone call or letter was received from Mr M about this, and it wouldn't make sense for YBS to not record it twice as it is important information. Bearing in mind Mr M's profession, he would have known it was important to ensure any potential letting of the property was approved by his mortgage lender and so should have followed it up if he didn't receive a response to a phone call and letter.

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 M would have been aware that this was a term of his mortgage. When YBS became aware of inconsistencies in the information Mr M 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.

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 CIFAS 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 M to accept or reject my decision before 13 October 2017.

Julia Chapman
ombudsman