

complaint

Mr A complains that Lloyds Bank PLC (trading as Scottish Widows Bank) incorrectly placed a fraud marker on his record. He says this has caused him hardship and financial loss.

background

Mr A took out a residential mortgage with Scottish Widows in 2008. In 2012, he applied for a further advance. This application was declined and a marker was placed against Mr A's name with CIFAS, a national fraud database.

Scottish Widows wrote to Mr A in July 2013 after he requested the marker be removed. It refused to remove the marker and explained the reasons why. In summary, it said it had found information to suggest Mr A was not living at the property and found inconsistencies on another mortgage application he made. Scottish Widows concluded there had been misuse of the mortgaged property, due to the evidence showing it to be a Buy to Let (BTL) rather than a residential mortgage. It also applied an unauthorised letting fee to the mortgage account.

In 2018, Mr A raised a complaint with Scottish Widows. He said he had lived between two properties and provided reasons for the inconsistencies in the mortgage applications. Mr A said due to personal and health reasons, he didn't pursue the matter after receiving the July 2013 letter. He felt that he had lost out financially and suffered inconvenience due to the CIFAS marker being placed on him.

Scottish Widows didn't uphold Mr A's complaint. Essentially, it provided the same reasons as it had in 2013 for placing the marker on Mr A's record and didn't think it should be removed. It did tell Mr A that the marker was due to drop off his record later in 2018, as it had been six years since it was first placed.

Mr A referred his complaint to this service. One of our investigators reviewed the available evidence. She understood Mr A's position, but she didn't think Scottish Widows made a mistake when it applied the CIFAS marker in 2012. So she didn't recommend that it remove it or pay Mr A any compensation.

Mr A remains unhappy. So he has asked for his complaint to be reviewed.

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 point I have to decide in this complaint is whether Scottish Widows made a mistake when it put a marker against Mr A's name on the CIFAS database in July 2012. To record information with CIFAS, Scottish Widows needed to have enough evidence to make a formal complaint to the police or other relevant law enforcement agencies about Mr A's mortgage application. CIFAS's website (at the relevant time Mr A's marker was added) said that before an organisation is able to place a warning on its database, they must have carried out checks of sufficient depth to satisfy this standard of proof. It goes on to say that there isn't an obligation to report everything to the police.

I've considered the information Scottish Widows has provided to support its actions. As part of the 2012 application review, Scottish Widows found that Mr A was on the electoral role at another address. It also says it found that two other people were registered to vote at the property mortgaged by Scottish Widows – who had been on the electoral role for several years. At the time, the letter was sent in July 2013, Scottish Widows found there were now four people registered to vote at the address – and Mr A remained registered elsewhere.

Scottish Widows also says that during the underwriting of the 2012 application, it became aware of a mortgage application Mr A made with another lender. This was for a residential mortgage on the property he was registered to vote at. Scottish Widows says information received from the other lender showed that Mr A had said that his Scottish Widows mortgage was on a buy to let (BTL) basis and that he had no other residential mortgages. And there was a discrepancy in the employment details Mr A had provided to the other lender compared to what he declared on the 2012 further advance application with Scottish Widows.

I think the information Scottish Widows found did provide them with reasonable cause for concern that the property wasn't being used as per the original intended mortgage. I'm satisfied that Scottish Widows met the appropriate criteria when placing the marker. It wrote to Mr A several times in 2012 to get clarification on the residency status of the property without reply. It sent him a letter in July 2013 to explain the reasons for the marker. The letter gave information to explain why it believed the property was being let despite a residential mortgage being the agreed lending basis. It provided several sources of information to explain its concerns. Mr A didn't dispute this letter at the time. I note Mr A has now provided reasons why he didn't challenge the marker in 2013. But I don't think he's provided enough to explain why it took nearly five years to raise his concerns.

I have considered Mr A's comments about the evidence he provided to prove he was resident at the mortgaged property. I'm satisfied that Mr A has been given the opportunity to provide any evidence he believes supports his case. I have seen a copy of the email he sent to Scottish Widows in November 2012 that attached a council tax bill for the property for the period 1 September 2012 to 31 March 2013. This shows an exemption from council tax for this period. It isn't clear why the exemption was given but it seems likely because the property had been declared unoccupied. I don't think this information supports that Mr A was resident in the property when the marker was placed. It is also for a period after the marker was placed. So, it follows that I haven't seen reason to support that Scottish Widows should have removed the marker.

Overall, I don't think that Scottish Widows made a mistake when it put a marker against Mr A's name on the CIFAS database in 2012. I appreciate that Mr A thinks that Scottish Widows should've given him the chance to respond before placing the marker. But it wasn't required to do this.

Scottish Widows says the marker has now fallen off Mr A's record. As I think it was entitled to record it, I don't think it would be fair or reasonable for me to ask it to compensate Mr A for the losses he says he has suffered as a result of the marker being recorded against him.

my final decision

For the reasons I've given, my final decision is that I don't uphold Mr A's complaint against Lloyds Bank PLC (trading as Scottish Widows).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 February 2019.

Daniel Little
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