

complaint

Mr C complains that National Westminster Bank Plc ('NatWest') wrongly recorded a Credit Industry Fraud Avoidance System ('CIFAS') entry following his mortgage application.

background

In November 2012 Mr C (and his wife) wished to purchase an additional property as their new home – but they had not yet sold or rented out their existing home. Mr C's brother recommended an Independent Financial Adviser (IFA) whom he had previously used. Mr C authorised his brother to have day-to-day dealings with the IFA. Mr C and his wife provided payslips and bank statements, and signed a sample customer signature form from NatWest as well as the IFA's terms and conditions.

Without their authority the IFA incorrectly stated – in the application form - that Mr C owned 15% of one his companies. The correct position was that he owned 40% and the remainder was held in trust for his wife and children.

If Mr C had held 15% of the company, NatWest would have treated him as *employed*.

As he held more than 20% of the company's shares, NatWest classified him as *self-employed* and declined the application. It also recorded a CIFAS entry as 'False Employment Status' because Mr C – whether by himself or his IFA as his agent - had given false information in the application form. The CIFAS entry has since impacted on his other financial and business dealings.

The adjudicator did not recommend that the complaint be upheld. He considered that, based on the false information contained in the application form, NatWest was entitled to decline the application and record a CIFAS entry.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken careful note of the further representations made by both parties since my provisional decision of 24 September 2013.

In my provisional decision I had considerable sympathy with Mr C over the impact of his IFA's admitted error in completion of the mortgage application form. I agreed that as the IFA was Mr C's agent, the replies in the application form were to be treated as Mr C's own – even though the IFA - rather than Mr C (and his wife) - did not sign the application form.

However, I did not consider that NatWest's response was proportionate – particularly in the light of the substantial businesses which Mr C operated and his unblemished credit record.

There was also some doubt as to whether NatWest (as a CIFAS member) could remove the CIFAS entry or it could only be removed by CIFAS.

It seemed to me that NatWest could have made further inquiries of Mr C and/or his IFA before declining the application when a discrepancy as to his shareholding arose. It could also have acted on the IFA's written admission of its error in January 2013. In my view it was not sufficient for NatWest to say that it would co-operate with any investigation by CIFAS. In

my view, NatWest's response in placing a 'fraud marker' on Mr C's credit report was disproportionate.

My provisional decision therefore was that NatWest should take immediate steps to remove the CIFAS entry and should pay £300 for distress and inconvenience ('D & I').

I have now received further information from Mr C's solicitors. They confirm that it was Mr C's brother who gave the 15% shareholding information to the IFA and it was not an estimate by the IFA himself.

NatWest, in its response to the provisional decision, confirms that it relied on the application form itself, submitted through the broker, and had no contact with Mr C himself. It also queries why, if Mr C was described as '*employed*' in the application form, there should be mention of any shareholding. The IFA '*assumed employment in normal terms*', so there is an unanswered question as to why therefore he stated any shareholding at all.

There is now no doubt in my view that NatWest was entitled to proceed with its CIFAS entry in the light of the incorrect information provided in the application form. Mr C's brother wrongly provided a 15% shareholding estimate to the IFA, which neither he nor the IFA checked with Mr C himself. Mr C had been asked to sign a sample application form and had not therefore checked its contents because he relied on his brother and the IFA. It was a careless rather than fraudulent mistake by or on behalf of Mr C, but I do not think there should be any criticism of NatWest in its initial decision.

In the light of this further information I do not now think there should be any award for D & I, but I still consider that NatWest should take immediate steps to remove the CIFAS entry.

my final decision

My final decision is that I uphold this complaint and that National Westminster Bank Plc should remove the CIFAS entry.

Charles Sweet
ombudsman