

## **complaint**

Mr L's complaint against Shop Direct Finance Company Limited (Shop Direct) is that it recorded a CIFAS marker against him.

## **background**

In November 2015, Mr L opened a credit account with Shop Direct, and placed three orders for goods.

After this he says he started university and moved address a number of times, forgetting about the debt. He says he then fell into severe financial difficulties and entered into a Debt Arrangement Scheme (DAS), forgetting to include his debt to Shop Direct. So no payments were made to the account.

As a result, Shop Direct defaulted Mr L's account, and registered a CIFAS marker against him in June 2016.

When Mr L found out about the CIFAS marker, he contacted Shop Direct and asked it to remove it. It declined to do so, saying it believed he'd applied for an account fraudulently, never intending to pay for the goods.

Shop Direct says Mr L didn't update him on his changes of address, and believed he'd never intended to pay for the goods from when he opened the account. It didn't understand why he hadn't included this debt in his DAS. So it recorded a CIFAS marker against Mr L's name.

Mr L brought his complaint to our service, explaining that the way his life had been with starting university; leaving home; changing addresses; and finding himself in severe financial difficulties, he'd simply forgotten about the Shop Direct debt. And that it was never his initial intention to not pay for the goods.

He was now paying back his Shop Direct debt, and felt the CIFAS marking, and its serious consequences for him, wasn't fair.

Our Investigator looked into matters and concluded that Shop Direct hadn't satisfied the "four pillars" criteria for applying a CIFAS marker, and therefore it should be removed, and £75 compensation paid to Mr L for his upset and inconvenience.

Shop Direct still didn't agree. It didn't believe Mr L had forgotten about the debt, as he'd been reminded of it before entering into the DAS yet still didn't include it there. It felt strongly it had met the four pillars requirement for registering the CIFAS marker.

As the parties couldn't agree, the complaint's come to me for a final decision.

## **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, I can see the merits of the arguments of both sides, and accept the matter isn't clear-cut. While I'm not convinced Mr L was as unaware as he maintains he was about

the debt with Shop Direct, I don't think opening the account was a premeditated fraudulent act.

Our Investigator helpfully explained the "four pillars" that required to be met by Shop Direct in adding the CIFAS marker:

*CIFAS is a fraud prevention service. Members of CIFAS can record and share information about their customers to help detect, deter and prevent fraud.*

*To use the database, a CIFAS member must operate within the terms of the National Fraud Database Handbook – a guide that sets out what the requirements are in order to add a CIFAS marker.*

*Principle 4 says that Cases filed to the National Fraud Database must be supported by evidence and meet the 'four pillars' of the Standard of Proof. The Standard of Proof is:-*

- 1. That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;*
- 2. That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject to the police;*
- 3. The conduct of the Subject must meet the criteria of one of the Case Types;*
- 4. In order to file the member must have rejected, withdrawn or terminated a Product on the basis of Fraud unless the member has an obligation to provide the Product or the Subject has already received the full benefit of the Product.*

*In order for me to conclude that SDFCL has acted fairly and reasonably by adding a CIFAS marker, I have to be satisfied, from the evidence I've received, that it has met all four pillars of the standard of proof.*

So, on balance, I think it's unfair for Mr L to have the CIFAS marker against him. I'm not satisfied the four pillars have been met – in particular the first one. I'm not saying it might not have been a close call, but overall I'm just not convinced that there's the evidence to suggest Mr L did this knowingly and deliberately. I believe he did have serious financial problems, which he found difficult to manage. And I'd imagine that the Shop Direct account wasn't the largest of his liabilities. So, even if he did get a reminder of the account somewhere along the line, I can still see why it might have slipped through the net, as it were, among everything else that he owed. And I don't think this is the same thing as Mr L actively deciding from the outset that he was going to open an account and never pay for it – which is what the first pillar requires to be proven on "reasonable grounds".

A CIFAS marker has serious consequences, and I don't think these are proportionate to the mistakes Mr L made here. I think it's right that the default remains, as it's an accurate reflection that Mr L failed to manage his debt. And that itself has consequences that Mr L will have to deal with. Mr L's also repaying the debt, which I think is entirely right. On that basis, I'm going to uphold the complaint.

I appreciate Shop Direct won't agree. It's articulated itself strongly and clearly. Even stating that CIFAS itself thinks the marker is fair and accurate. But I'm afraid I'm still not persuaded. CIFAS, in giving this advice, don't know the full facts, and although I can be guided by its view, I'm not bound by it.

I hope I've explained why I think my decision is fair to **both** parties.

**my final decision**

My final decision is that I uphold this complaint. To resolve matters, I'm asking Shop Direct Financial Company Limited to remove the CIFAS marker it placed against Mr L's name, and to pay him £75 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 May 2020.

Ashley L B More  
**ombudsman**