

complaint

Mr and Mrs S complain that Santander UK Plc unfairly put them on the Credit Industry Fraud Avoidance Scheme ("CIFAS") database.

background to complaint

I issued my provisional decision in December 2017; a copy of which is attached to, and forms part of, this final decision. In my provisional decision I explained why I wasn't minded to uphold Mr and Mrs S's complaint. I invited both parties to let me have any further submissions before I reached a final decision.

Santander had nothing further to add. Mr and Mrs S disagreed with my provisional decision.

my findings

I've reviewed all the submissions carefully, and considered the case afresh, but my opinion hasn't changed.

Mr and Mrs S have made numerous submissions in response to my provisional decision, both by email and by phone. Whilst I've considered everything they've said, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at. Mr and Mrs S have asked some questions in response to my provisional decision. It's not our place to answer those, or be directed in how we consider the complaint. To do so would affect our impartiality. To be clear, Mr and Mrs S are entitled to have their complaint reviewed by an ombudsman, but they're not entitled to dictate what the ombudsman does and doesn't consider or answer.

Mr and Mrs S have mentioned the investigator's "decision" and questioned if that was wrong. They've also asked if there's a possibility of a third review as the investigator thought the complaint should be upheld, and I said it shouldn't, so there was no clear outcome.

My provisional decision in December 2017 was the first decision that's been issued on the complaint. The earlier correspondence was an assessment issued by one of our investigators. Our investigators are tasked with looking into complaints and setting out their thoughts. But their thoughts are only that. They're not a decision and aren't binding.

We have a two-stage process, and the second stage of that – if either party doesn't agree with the investigator – is for an ombudsman to decide the case. And that's what I've done here. It wouldn't be a true two stage process if I simply "rubber-stamped" what our investigator thought even if I didn't agree.

The ombudsman instead reviews the entire complaint from the beginning, without bias to either side (and without being led by the investigator's assessment), and reaches a decision that he or she considers fair and reasonable in the circumstances. In some cases the outcome remains the same, but in others this results in a change.

There's no third-stage within our process and so this final decision represents our final word and will not be reconsidered.

Mr and Mrs S have said it's not clear if I think Santander did anything wrong. They say that by talking about Mr S's loss of employment it implied I thought Santander had done something wrong as I was looking at how to put it right. That's not correct.

My provisional decision says (after talking about the loss of employment) *"I say all this as it ties in with the overall circumstances of this complaint, in that the information provided by Mr and Mrs S was inconsistent."* So it's clear I only went into the level of detail I did about Mr S's loss of employment because it showed the inconsistencies in what Mr and Mrs S had told us when bringing their complaint. Bearing in mind this whole case is about inconsistencies in what Mr and Mrs S said and provided to Santander, I can completely understand why Santander acted as it did.

In fact there've been further inconsistencies in Mr and Mrs S's submissions following the provisional decision, with them now saying Mr S didn't lose his job the same day he told his line manager about the CIFAS marker. In a call to the investigator he said it was 22 days later, and in an email that was changed to 27 days later. This doesn't matter in terms of the outcome, but highlights again the inconsistencies we keep coming up against.

Mr and Mrs S have provided emails between Mr S and the agency and employer, but none of these give any more insight into why he lost his job, other than he failed to meet the vetting criteria. Even were I to consider Santander had added the marker incorrectly – or that it should have removed it sooner – (which, to be clear, I'm not saying) this complaint still fails as Mr and Mrs S haven't shown that Mr S most likely lost his job just because of the CIFAS marker.

Mr and Mrs S have also now said that rather than knowing Mr S wouldn't be able to work for any financial institution, it was just an assumption they made so he didn't actually try applying to one. On that basis, I can't say for sure Mr S couldn't have been back in employment much sooner had he actually applied for a suitable role.

I've been given no reason to depart from my findings in my provisional decision. For clarity I'll copy those findings here:

"At the time Santander registered the CIFAS marker all it knew was that the information provided by Mr and Mrs S didn't match what they'd told HMRC about their earnings. It wasn't Santander's place to dig further or potentially tip Mr and Mrs S off about it being aware of their potential fraud. Mr and Mrs S could have provided further information at the time to appeal the mortgage decision, information they later provided which led to the CIFAS marker being removed.

All things considered I'm satisfied Santander didn't make a mistake when it registered the marker, as it based that decision on the information Mr and Mrs S had provided at the time.

That said, even if I did consider Santander had made a mistake here I wouldn't be awarding compensation for Mr S's lost earnings. I say this because, based on the information I've set out above, there's a lot of inconsistencies in the information we've been provided about what happened with Mr S's employment. We have no evidence to show Mr S was sacked just because of the CIFAS marker, or that he was unable to gain alternative employment in the seven months that followed just because of the CIFAS marker."

I understand how strongly Mr and Mrs S feel about this issue. But having reviewed everything I'm satisfied Santander did nothing wrong here and so I can't hold it liable for the situation Mr and Mrs S ended up in.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 1 March 2018.

Julia Chapman
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs S complain that Santander UK Plc unfairly put them on the Credit Industry Fraud Avoidance Scheme ("CIFAS") database.

background

Mr and Mrs S were moving house and applied to Santander for a new mortgage. After receiving Mr and Mrs S's proof of income Santander carried out some additional checks with HMRC which came back saying their income wasn't verified.

In March 2016 Santander declined the mortgage application and placed a CIFAS marker. Mr and Mrs S say they found out about the CIFAS marker in October 2016 and raised a complaint with Santander. Mr S says he also had to immediately tell his employer as he worked in financial services, which led to him being sacked and escorted from the premises the same day. Mr S said he'd not worked since, and could never work for any financial institution because of the marker.

Our investigator obtained some further information from Mr and Mrs S and sent it to Santander. Upon receipt of that Santander reviewed the case and decided to remove the CIFAS marker. Our investigator recommended Santander pay Mr S a sum equivalent to his lost wages as well as £600 in compensation. Neither side agreed.

Mr and Mrs S wanted more. They said Mr S started a new job on 26 June 2017, but they wanted the lost income calculation to be run until 31 August 2017. They also wanted a minimum of £10,000 each in compensation. They said the final figure would be at least £90,000.

Santander said Mr and Mrs S should have provided the extra information sooner as it would have been apparent what was needed to match the information supplied to HMRC. It also said it had no way of knowing what didn't match as HMRC wouldn't tell them that due to data protection laws. It said it did nothing wrong when registering the CIFAS marker, therefore everything that followed wasn't its responsibility.

As the parties couldn't agree it's been passed to me to decide.

my provisional findings

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

Having reviewed everything I'm concerned about the inconsistencies in the information Mr and Mrs S have provided.

Mr S said *"Upon knowing about this CIFAS marking, I had to notify my employer and leave my job and client in a matter of few hours"*. Elsewhere he's said *"I literally had to leave by job where I worked for 10 years in just 20 minutes."* Whether it was a few hours or 20 minutes, Mr S's been clear throughout that he told his employer immediately upon finding out about the marker and was "sacked" and escorted from the building the same day. He's also said he raised a complaint with Santander at the same time. The final response letter from

Santander was dated 18 October 2016, so Mr S obviously found out about the marker on or before that date. But his employment wasn't terminated until 8 November 2016, with his last working day being confirmed as 7 November 2016.

Mr S says he was sacked after telling his manager about the CIFAS marker. But the two confirmations of his employment ending we have on file say:

- *"your contract was terminated as your vetting results was found to be non compliant against the requirements", and*
- *"This notice of termination is effected under Clause 9.5 of the Assignment, and is issued at the direct request of the Client."*

Clause 9.5 says *"Unless varied in the Assignment Schedule, the Company may terminate the Assignment without cause and for whatever reason by giving written notice of:*

9.5.1 Five calendar days if the Assignment has not commenced, or is of 8 weeks or less duration;

9.5.2 Fourteen calendar days if the Assignment is for more than 8 weeks but less than or equal to 26 weeks duration;

9.5.3 Twenty-eight calendar days if the Assignment is for more than 26 weeks duration."

However the special conditions of Mr S's contract says *"Points (1), (2) and (3) of Clause 9.5 shall be amended to read as follows: 'This Assignment may be terminated by Either Party upon giving the other 4 weeks notice in writing.'"*

Neither of the confirmations of termination we have on file support Mr S's claim that he lost his job after he told his manager about the CIFAS marker. The first bullet point says his vetting results were non-compliant, which implies a check was done by the employer which threw up a problem rather than Mr S being sacked after telling them about the marker. The second bullet point relates to standard termination. There would have been other more suitable clauses (such as 9.3 *"The Company shall be entitled to suspend or terminate the Assignment forthwith without notice or liability at anytime in the event of any of the following..."*) to use if Mr S was sacked with immediate effect due to the CIFAS marker.

I've also considered the contract Mr S has sent us. This was drawn up on 17 October 2016 and was due to run from 1 November 2016 until 30 April 2017, albeit it was unsigned. This contract has Mr S's (and his business's) address as a property he hadn't lived at for some three years.

Mr S made much of being out of work for so long and that he'd be unable to work for any financial institution. Mr and Mrs S brought this complaint to us at the end of May 2017 and Mr S started a new job – for a financial institution – in June 2017, at which time the CIFAS marker was still present. So it seems the CIFAS marker *didn't* stop him getting work within financial services.

Mr S only told us about his new job on 29 August 2017, saying he'd only just got the chance to tell us. This is despite there being numerous emails and phone calls between Mr S and our investigator in that two-month time period (including conversations about his lost income). We also received an email from Mr S on 8 August 2017 asking if he could have confirmation in writing of the removal of the marker. He said *"Just trying to see if I can get hold of some document to approach my ex-employer to considered me to rejoin or for*

potential recruiters.” But at that point he’d already got a new job, in a financial institution, and had been working there for over a month.

I say all this as it ties in with the overall circumstances of this complaint, in that the information provided by Mr and Mrs S was inconsistent. At the time Santander registered the CIFAS marker all it knew was that the information provided by Mr and Mrs S didn’t match what they’d told HMRC about their earnings. It wasn’t Santander’s place to dig further or potentially tip Mr and Mrs S off about it being aware of their potential fraud. Mr and Mrs S could have provided further information at the time to appeal the mortgage decision, information they later provided which led to the CIFAS marker being removed.

All things considered I’m satisfied Santander didn’t make a mistake when it registered the marker, as it based that decision on the information Mr and Mrs S had provided at the time.

That said, even if I did consider Santander had made a mistake here I wouldn’t be awarding compensation for Mr S’s lost earnings. I say this because, based on the information I’ve set out above, there’s a lot of inconsistencies in the information we’ve been provided about what happened with Mr S’s employment. We have no evidence to show Mr S was sacked just because of the CIFAS marker, or that he was unable to gain alternative employment in the seven months that followed just because of the CIFAS marker.

my provisional decision

For all of the reasons I’ve set out above, but subject to the further submissions of the parties by the due date, my provisional decision is I don’t uphold this complaint.

Julia Chapman
ombudsman