

complaint

Mr N complains that Bank of Scotland plc (trading as Halifax) will not remove a Credit Industry Fraud Avoidance System ('CIFAS') entry it registered against him after a mortgage application he made to it.

background

I've issued two provisional decisions on this case. The most recent was on 30 November 2017. The content of both is attached below and forms part of this final decision.

Mr N responded saying there wasn't any need to inflate his income, because Halifax would have lent what he wanted in any event. He attached a message from his employer in respect of job A, plus a letter from the employer in respect of job B, written presumably to clarify his earnings.

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 won't be departing from the position set out in my second provisional decision.

I understand Mr N's concern that I've relied on evidence submitted in confidence; but as I explained in the second provisional decision, our rules allow for this. It's not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it.

I'm grateful to Mr N for the enclosure regarding job A, but as I said in the first provisional decision, this case is really about how his income from job B was declared. On that point, I've studied the letter Mr N's sent regarding that very carefully.

The company itself is registered at Companies House, and the letter is apparently from the HR department. But it's missing the writer's name. The letter has a signature, but it's not possible to decipher a name from that. The letter quotes a company website which, when I tried to view it with the aim of locating an HR contact, came back as non-existent. Overall, I've decided I can't place any weight on it.

my final decision

I don't uphold this complaint. I make no order or award. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 19 January 2018.

Jeff Parrington
ombudsman

Content of Second Provisional Decision

complaint

Mr N complains that Bank of Scotland plc trading as Halifax will not remove a Credit Industry Fraud Avoidance System ('CIFAS') entry it registered against him after a mortgage application he made to it.

background

By way of a first provisional decision dated 24 October 2017, I set out, with reasons, how I was minded to determine this complaint, subject to the further submissions of the parties to it. The content of that decision is attached below and forms part of this second provisional decision.

Both parties have responded. Mr N accepted my proposed settlement, and made some general comments about his relationship with his employer in respect of job A. Halifax provided a much more detailed submission that previously, about the background to its decision to place the marker. It made the submission in confidence.

Our rules permit this; it's then for me to decide whether it's fair to rely on evidence that only one party has seen. The information (and its source) is sensitive and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether Halifax has treated Mr N fairly. So I'm persuaded I should take it into account when deciding the outcome of the complaint.

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 done that, I'm minded now to depart from my first provisional decision and find instead that the CIFAS marker should stay in place. I can't go into detail without revealing information which as I've said, is confidential and should remain so. All I can safely say is that I'm no longer persuaded that the inaccuracy in the information Mr N provided about his income from job B was most likely down to confusion and/or a lack of attention to detail on his part.

my provisional decision

My provisional decision, subject to the final submissions of the parties, is that I don't intend to uphold this complaint.

Jeff Parrington
ombudsman

Content of First Provisional Decision

complaint

Mr N complains that Bank of Scotland plc trading as Halifax will not remove a Credit Industry Fraud Avoidance System ('CIFAS') entry it registered against him after a mortgage application he made to it.

background

Mr N applied to Halifax for a mortgage through a broker. Part of the application involved the broker making a declaration, on Mr N's behalf, of how much he earned. Mr N had two jobs at the time of applying; for ease of reference, I'll call them job A and job B.

Halifax thought the declared income for job B had been over-stated. It rejected the application and placed the CIFAS marker. Our investigator thought Halifax's action was reasonable. Mr N maintains he made an honest mistake and wasn't intending anything fraudulent.

The case comes to me to review and decide what's fair.

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.

The crux of this case, clearly, is how much Mr N earned from job B. I've seen a statement from Her Majesty's Revenue and Customs (HMRC) showing Mr N's earnings from job B in 2016/17 as just short of £31,000. It doesn't cover the whole year as he'd only been in the job for nine months at the end of the tax year. Extrapolating that figure to reflect Mr N's annual earnings from job B produces a figure of almost £41,300. The amount declared on the application was close to £44,400.

In that context, I'm satisfied Halifax acted perfectly reasonably in placing the marker. Mr N clearly did overstate his earnings. But I've thought very carefully about whether the marker should now be removed, and I've decided it would be the fair thing to do.

Mr N's position throughout is that he got confused when working out the annual equivalent of his earnings so far from job B. Overall, I find that a more likely explanation than the alternative; that Mr N set out wilfully to deceive Halifax into lending him money he wasn't entitled to borrow. I've reached that conclusion after taking into account all of the relevant circumstances, including those relating to Mr N's job A, details of which it wouldn't be appropriate to reveal in a decision that may in due course be published.

Mr N has acted rather carelessly, and I think he probably realises that. But I don't believe he's acted with intent to defraud. I think that the CIFAS marker remaining against his name for six years would be a disproportionate punishment for his lack of attention to detail.

my provisional decision

My provisional decision, subject to the final submissions of the parties, is that I intend to uphold this complaint in part. In full and final settlement, I intend ordering Bank of Scotland plc trading as Halifax to remove the CIFAS marker from Mr N's record. I don't intend to award Mr N any compensation, as it was his own error that caused Halifax to place the marker in the first place.

Jeff Parrington
ombudsman