

## The complaint

Mr R's complaint against Kensington Mortgage Company Limited is that it refuses to remove a CIFAS marker it placed against him.

Mr R has been represented by a third party in bringing this complaint. I will only refer to Mr R in this decision, and any reference to Mr R should be taken to mean his representative acting on his behalf where appropriate.

## What happened

In April 2022, Mr R applied for a buy to let ("BTL") mortgage with Kensington through a mortgage broker. In doing so, Mr R has admitted he submitted falsified bank statements to support this application. When Kensington did further checks, and realised what had happened, it recorded a CIFAS marker against him for application fraud.

Mr R accepts that he doctored his bank statements as part of his application. But he's very contrite about doing so. He's explained that it was a lapse in judgement which 'stems from being extremely distracted, understandably, by [a close family member's] illness, under pressure from strained property management systems, worried about rising rates and multiple mortgage and remortgage applications due, and most of all as a result of not appreciating the consequences of what I was doing.'

He said that the figures provided on the statement were accurate, but he'd amended the way it was set out which he says was incredibly misguided. Mr R said:

- 'Although the figures were accurate, I resorted to putting all rents onto one altered [bank statement], and all mortgages onto another altered statement. My decision to do this was born purely out of a lack of time available to me to prepare the application properly, namely, gather and marshal all the relevant bank statements from different accounts showing receipt of rental payments by individual tenants.'
- 'Conversations with broker friends around this time had made me increasingly worried that submitting bank statements which show that I was allowing my tenants to pay individually might raise undue concerns from lenders. That they might incorrectly assume that some of the properties were HMO multi-lets. The difference hinged on the fact that I let each of my places out on single AST contracts to groups of friends, but as I assembled all the paperwork, I became increasingly worried that it would fall on deaf ears...'

Mr R thinks this should be taken into account by Kensington.

Mr R wrote to Kensington, explaining in detail his situation. He accepted that what he did was wrong, and he deeply regretted it, but hoped that with the information he had now provided about his personal circumstances at the time, Kensington would agree to remove the marker.

Kensington said it couldn't do this. It said it had taken all of what Mr R had said into account, but that its CIFAS report was correct and the marker would remain.

Mr R didn't think Kensington had treated him fairly, so he brought his complaint to our service. Our Investigator looked at the evidence, including Mr R's detailed submissions about his circumstances running up to the time of the application, and concluded that Kensington hadn't dealt with Mr R unfairly in declining to remove the CIFAS marker. He didn't uphold the complaint. He said that Mr R had accepted he had provided altered statements and so it was reasonable for the CIFAS marker to remain.

Mr R didn't agree. He said nothing in our Investigator's assessment indicated he had considered the information that had been provided and the effect it had had on the original decision. He said that Kensington's response didn't indicate it had made a qualitative and thoughtful assessment on the correctness of the marker in light of his personal circumstances, which it hadn't been aware of originally. Finally he said we would be familiar with the common advice that people should avoid making major decisions whilst grieving, for this reason, however as life can't stand still he made a rash and uncalculated decision, intended purely to simplify what was an incredibly overwhelming time for him.

Our Investigator considered these further submissions carefully, but explained that they didn't change his view that he couldn't uphold the complaint. He said Mr R had a relatively large BTL portfolio and Mr R would be aware how an application should be conducted. He said he wasn't persuaded by Mr R's reasoning as to why the statements were altered.

As an agreement couldn't be reached it was passed for an ombudsman's review.

### **What I've decided – and why**

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'm afraid I don't have the answer Mr R is looking for. While I have genuine sympathy for what he's gone through, I can't reasonably say that Kensington has made a mistake or treated him unfairly. I know this decision will be deeply disappointing for Mr R as he now has a marker in place that will hold him back. I entirely understand this. But I can't say that it's been placed in error, unfairly placed, or that it should now be removed, even after reading and taking into account everything Mr R has told us and Kensington.

I'm conscious that I've summarised this complaint in less detail than the parties. No discourtesy at all is intended by this. Instead, I've focussed on what I think are the key issues here, and which our rules allow me to do. So if there's something I've not mentioned, it isn't because I've ignored it. That's not the case at all. I've considered everything carefully, but I'm satisfied I don't need to comment on each individual argument to be able to reach what I think is the right outcome.

CIFAS is a fraud prevention agency. Mr R's name has been registered with it for application fraud, because that's - as a matter of fact - what happened in April 2022. That's not in dispute. By that I mean Mr R has admitted he falsified his bank statements, albeit he says he didn't alter the underlying facts in terms of the total sums of money in and out.

Mr R has provided us with a lot of background information, which I have a great deal of sympathy with. Things clearly weren't easy for him and he's been through some very difficult times. But I think key to this complaint is that this wasn't an innocent oversight on Mr R's part, he has stated in his testimony that he actively chose to falsify his bank statements as he was worried that a lender might decline his application if he didn't as it might have

thought the properties were let on a HMO basis, rather than under assured shorthold tenancies. I can see why Mr R may have had those concerns, but lenders have the right to know the true picture, and then ask questions based on that. Mr R tried to deny Kensington the right to decide this application based on the true picture by falsifying information, and it is only right – irrespective of what Mr R was going through at the time – that it reported this as application fraud.

Mr R is a professional landlord with a portfolio of BTL properties, and he also employed the services of a mortgage broker. Mr R ought reasonably to have been aware of the importance of full and accurate disclosure when making a mortgage application as he would have been through this process many times. Businesses have an obligation to report application fraud, and I'm satisfied on looking at the criteria that Kensington had enough to record the CIFAS marker at the time.

Mr R doesn't seem to dispute that Kensington was right to make the report it did at the time. But he now wants it to review its position given what he's said about his circumstances. While I can see why he's asking for this, this isn't a situation where mitigation is relevant. It's more factual than that. As a matter of proven, and accepted, fact Mr R made a fraudulent application, and that's what the record now shows. To amend that record wouldn't be right.

Mr R has referenced a final decision issued by this service, saying it was a decision on mitigating factors. I've looked at the decision in question and the circumstances are very different to this complaint. The decision Mr R has referred to is from 2018 and it is a complaint about how a customer has been treated when they fell into arrears on their credit card. The specific quote mentioned that the business 'have a responsibility to listen to their customers and take any mitigating factors (such as health issues and bereavement) into consideration.' But that is in the context of how the business handled calls with the customer which is a very different thing to the complaint I'm considering here.

Mr R also mentioned Consumer Duty, but as this wouldn't have been a regulated mortgage contract then the Consumer Duty doesn't apply.

Once again, I'm genuinely sorry to hear what's happened to Mr R, and I wish him well for the future. But it wouldn't be fair or correct for me to ask Kensington to change the report it made to CIFAS. To do so would be asking it to exercise a discretion it doesn't have.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 December 2024.

Julia Meadows  
**Ombudsman**