

The complaint

Mr D has complained BMW Financial Services (GB) Limited added a fraud-related marker to his record without providing him with adequate notice. He wants the marker removed.

What happened

In 2019 Mr D went to buy a car and applied for finance with BMW. In support of his application he provided three bank statements and three payslips. BMW rejected Mr D's application as they believed he'd falsified information on his bank statements and provided fake payslips. They loaded a marker to the fraud industry database, CIFAS.

Mr D bought the car outright.

Whilst Mr D admitted providing altered information, he complained to BMW that they'd not provided him with a Fair Processing Notice as required, so this meant the CIFAS marker should be removed. BMW provided Mr D with final responses in 2020 and 2023.

Mr D brought his complaint to the ombudsman service in early 2023.

Our investigator considered the breadth of information Mr D provided in support of his case, as well as reviewing the facts of the case. She explained it was her role to decide whether BMW had met the bar set by CIFAS to submit a marker under its rules. She felt overall they had and that it was most likely BMW had acted with "legitimate interest" in sharing Mr D's personal information with CIFAS.

Mr D appealed this view and has asked an ombudsman to consider his complaint.

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've reached the same outcome as our investigator. I'll explain why.

I can see our investigator confirmed why she thought our service had jurisdiction to consider all aspects of Mr D's complaint. Neither party commented on this aspect, so I've no need to refer to this within my decision any further. However to avoid any doubt, I'm satisfied all issues are within our jurisdiction for me to consider.

I'd like to thank Mr D for his honesty in sharing his medical health history in such detail. I can confirm I've reviewed this in full and considered what impact, if any, this should have on his complaint.

It is clear what the requirements are prior to lodging a marker. Specifically:

"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted."

The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”

So BMW must be able to provide clear evidence that an identified fraud was being committed and Mr D was involved.

Actually all parties accept this was the case. I've seen the three bank statements and payslips Mr D gave to BMW at the time of the finance application. I accept his story that he “naively” believed falsifying this information would show him in a better light and more able to pay for a long-term credit agreement, particularly taking into account his age at the time of the application. However there's no dispute that Mr D changed the payer of three credits into his account to the name of a non-existent employer, altered the amount of one credit and provided three payslips which weren't real either.

So I can see why BMW believe they've met the high bar set for lodging a CIFAS marker. I agree they have.

As our investigator explained, my role isn't to decide whether Mr D committed an identified fraud or not but whether BMW had enough evidence to enable them to lodge the marker. I'd be rather surprised if Mr D is a fraudster, so I can absolutely understand why he's unhappy about the marker which I'm sure he feels is disproportionate to what happened. I accept that but whilst I sympathise I can't oblige BMW to remove the marker even though I've considered Mr D's personal circumstances.

I've also reviewed the other aspect of Mr D's complaint – that BMW weren't able to share his personal information with CIFAS because he wasn't provided with a specific notice. The evidence on this is contradictory. But I agree with our investigator that BMW has acted with “legitimate interest” here in sharing Mr D's details.

I stress that it's not our service's role to adjudicate on issues of data protection as there's a separate institution that's the regulator on this. Mr D can refer this issue to the Information Commissioner's Office if he wishes.

I appreciate how concerned Mr D is about what has happened but I'm not going to ask BMW to do anything further.

My final decision

For the reasons given, my final decision is not to uphold Mr D's complaint against BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 October 2023.

Sandra Quinn
Ombudsman