

## The complaint

Mr H complains that Godiva Mortgages Limited made an entry on a fraud prevention database in connection with a buy-to-let mortgage application he made through a broker in October 2021.

## What happened

Mr H applied for a mortgage with Godiva through an independent mortgage broker. Godiva declined the application and, some months later, Mr H learned that it had also made an entry about the application on a fraud prevention database.

On 26 August 2022 Mr H phoned Godiva saying:

- he'd applied for a mortgage the year before which had been refused, and a marker had been put on his credit file about an undeclared conviction,
- his broker had told him to speak to Godiva to get it removed,
- he was finding it hard to get a mortgage now,
- the application form that his broker filled in asked *'Have you got any unspent convictions?'* to which he put *'no'*. Mr H said that was right as the conviction *"...was spent in like 2017 or something"*,
- the question Godiva had asked him was 'unspent' and that's what he put down. He said he answered it according to the question.

Unhappy with what he'd been told Mr H said he wanted to raise a complaint so he could refer it to the Financial Ombudsman Service.

Godiva spoke to Mr H again on 31 August 2022 as he'd called to follow up on matters. In that call Mr H was told the marker wouldn't be removed because it was an unspent conviction and he hadn't declared it. Mr H:

- asked what benefit there was to Godiva of keeping the marker on as it was causing him lots of issues,
- said he had three other mortgages and didn't disclose anything for those,
- asked if it was a typing error from the broker as he said it wasn't him that completed the application,
- was told that if it was a mistake by the broker then he needed to complain to the broker about that, which Mr H didn't want to do as it wouldn't get the marker removed,
- said the broker hadn't run it past him and asked why Godiva hadn't checked with him directly,
- said it was a simple typing error and he wasn't sure what the broker had done as he wasn't there when the broker did the application.

On 12 September 2022 there was a further call, this time to deliver the outcome of the complaint investigation. Godiva said it couldn't remove the marker as the application form had asked if Mr H had any unspent convictions which he'd answered no, when he should have answered yes. Mr H said:

- he didn't review or sign the form,
- he'd got three other mortgages and for every application he answered that question in the way it should be answered,
- he was aware that any sentence over four years is never spent, but that wasn't why he was making the complaint. He said he was making the complaint because his broker didn't ask him that question,
- Godiva hadn't confirmed the accuracy of the application, and a financial website was prepared to write an article about it,
- he wasn't present when the broker made the application and the broker hadn't run it past him,
- he wasn't even aware the application had been sent and he hadn't heard of Godiva before he saw the marker on the fraud prevention database,
- he always declares his conviction and his other mortgage lenders are fine with it because it isn't fraud related,
- his other lenders always ask and he declares it,
- it was a new broker he used for this application and the broker didn't ask.

It was left that the call handler didn't think the marker would be removed but that they would refer what Mr H had said to a colleague.

Godiva called Mr H again on 16 September 2022. Godiva opened by asking Mr H to confirm he'd said it was a new broker that he'd used; one that he hadn't used before. Mr H replied "yes". Mr H said he wasn't asked by the broker about unspent convictions and he wasn't even aware the broker had applied to Godiva. Godiva said that Mr H should make a complaint to the broker, and if the broker was to write to Godiva confirming what Mr H had said then it could look at things again. Mr H said he didn't think the broker would admit it and asked what benefit there was to Godiva of leaving the marker on. Mr H said he'd ring him (meaning the broker) and see what he says. Godiva asked who the broker was, to which Mr H replied "[broker's company name], that's all I know."

The final call took place on 21 September 2022:

- Mr H said he'd spoken to the broker and he wasn't willing to get involved.
- Godiva explained that if the broker did what Mr H said then he needed to complain to the broker as he was responsible and the potential removal of the marker hinged on that.
- Mr H asked how long it would take to receive a final response letter from Godiva as the financial website was ready to write the article, but wouldn't do anything until he'd received the response to his complaint.
- Godiva asked whether Mr H was going to complain to the broker, and he replied he'd spoken to the broker and was going round in circles.
- He said the financial website said Godiva should have confirmed the accuracy of the application and run it past Mr H first. He said Godiva should have confirmed with him that he was aware of the application.
- Godiva explained it goes off the application the customer's broker makes, to which Mr H replied it wasn't his broker, it was just a broker he'd found online.

The final response letter was issued on 4 October 2022 and Mr H referred his complaint to us shortly after.

Our investigator looked into Mr H's complaint. She said she understood why Godiva registered the marker at the time, but based on further information Mr H had provided she felt he hadn't intentionally provided false information. She felt Godiva should remove the marker.

Godiva didn't agree and so the case was passed to me to decide.

### **What I've decided – and why**

I issued a provisional decision in August 2023, the findings of which said:

*"In considering a mortgage application – like all lenders – Godiva will review the application and supporting evidence. It considers whether its lending policy is met, but also carries out various underwriting checks to confirm the accuracy of what it's been told. And where it finds something of concern, it may report that to a fraud prevention database. The fraud prevention databases enable the sharing of information across the financial services industry in the interests of fraud prevention.*

*On the mortgage application form there was a question "Do you have any unspent convictions?" which was answered "No". It isn't now in dispute that answer was wrong. That's because, due to the length of Mr H's sentence, it would never be considered spent under the Rehabilitation of Offenders Act 1974.*

*When Mr H complained, Godiva gave him a chance to explain the non-disclosure so it could consider whether or not to remove the marker but unfortunately Mr H provided different accounts of what had happened.*

*In the first call Mr H was clear that he'd applied for the mortgage, albeit the broker had filled in the application. There was no mention, like there was in the later calls, that the broker had made the application without Mr H being aware of it. When discussing the question Mr H said the answer 'no' was right because the conviction was spent in 2017. He said:*

- *"... the question you asked me was 'unspent'. That's what I put down."*
- *"...the question you asked me was 'unspent conviction' and I answered it according to the question, didn't I?" ,and*
- *"...it said, 'Do you have any unspent convictions?' and I put 'no'."*

*From these statements I can only conclude that Mr H wasn't disputing that he made the application and was aware of the question that had been asked, as he said how he had answered it. It also seems apparent from this that Mr H thought he'd answered the question correctly; that is, he thought his conviction was spent.*

*Our investigator upheld the complaint as Mr H said that following that call he contacted a service that provides information to people with convictions. I've listened to the call with the information service and I'm satisfied from what he said that Mr H did make this application, and that he had incorrectly said his conviction was spent. At various points in that call Mr H said:*

- *"I wasn't aware of that. I put it down on a mortgage application..." [in response to being told it would never be spent]*
- *"They almost always ask if you... I didn't know... I thought it was spent you see. They just said do you have any unspent convictions and I put no" [about applying for mortgages]*
- *"I'm trying to get it removed, but I don't think they will now." [about the marker]*

*Whilst I can understand why our investigator reached the outcome she did, I think the broader picture needs to be considered.*

*Mr H was given an opportunity to tell Godiva in any of the follow up calls that he'd made a mistake and not realised his conviction would never be classed as spent. Had he done so and having listened to the call he had with the information service, I might have told Godiva to remove the marker as Mr H hadn't acted dishonestly. But he didn't do that. Instead, he gave different reasons for the non-disclosure which clearly contradicted what he'd previously said.*

*On 31 August Mr H said he hadn't disclosed anything on his other three mortgages. But on 12 September he said he had disclosed it to the other lenders, and they were fine with it because it wasn't a conviction for fraud.*

*On 31 August Mr H said it was possibly a typing error by the broker, but he wasn't sure what had happened as he wasn't there when the broker did the application. But in the original call on 26 August (and in the call to the information service) he was clear that he'd answered the question, but it had been answered incorrectly due to him misunderstanding whether or not his conviction was spent. His later testimony (on 12 September) changed to him not even knowing an application had been made which, if correct, is unusual that he hadn't mentioned it sooner.*

*In the call of 12 September Mr H was clear he was aware his conviction was unspent, and that wasn't why he was complaining. He said he was complaining because his broker didn't ask him the question. But that doesn't tie in with the testimony of 26 August (or the call with the information service that same day) that I've set out above.*

*Finally, Mr H said in the 12 September call that it was a new broker that he hadn't used before. Godiva clarified that statement at the start of the call of 16 September where Mr H was asked to confirm what he'd said in that it was a new broker he hadn't used before, to which Mr H replied "yes". But that's not true. Mr H has provided us with a copy of the application form for a mortgage he applied for in 2019 with a different lender, and the broker that submitted the 2019 application was the same one as he used for this Godiva application. Mr H also told our investigator he used that same broker for a 2013 mortgage application, albeit I've not seen that application form.*

*Despite the discrepancies in Mr H's testimony Godiva still gave him a final opportunity to provide the information it needed to consider removing the marker. It said if Mr H provided a letter from his broker which confirmed the broker hadn't asked Mr H the question then it would reconsider. Mr H said he'd asked the broker but the broker wasn't willing to do so, but despite being asked why he hadn't complained to the broker bearing in mind Mr H had said the broker had applied for the mortgage without Mr H's authority and that the broker had answered the question incorrectly, Mr H seemed fairly resistant to the idea.*

*Mr H has said that Godiva should have confirmed the accuracy of the application with him and confirmed that he was even aware of it. But this application came through a professional independent mortgage broker, so Godiva had no reason to do either of those things. As part of the application submission the broker agreed to the following points:*

- "Each applicant has confirmed that the contents of the application form are true;*
- You have explained the content of the declaration to each applicant; and*
- You have obtained each applicant's verbal agreement to the terms of the declaration."*

*Godiva was entitled to accept an online submission from a mortgage broker (without a signature from Mr H) and to rely on the information recorded within it as being true. Godiva had no responsibility to contact Mr H directly to check if he was aware of the application. And if Mr H is saying this application was made without his consent then that is something he can take up with his broker directly as Godiva explained.*

*Mr H had the opportunity to explain to Godiva what had happened following his call with the information service; that is, he'd made a mistake and not understood his conviction wasn't spent. Instead he gave different reasons for the non-disclosure, including some material falsehoods (such as that this was a new broker he'd not used before). Mr H then had an opportunity to complain to his broker about what he said had happened, but he was resistant to do so. As far as I'm aware that complaint still hasn't been made as Mr H has made no reference to the outcome of it which I would have expected him to do had a complaint been made.*

*Having taken everything into account, including the original application and all the calls, I'm satisfied the information Mr H gave across those amounts to a material falsehood, rather than an innocent mistake, and Mr H intended to mislead. It follows that I'm satisfied Godiva acted fairly and reasonably in registering the information it did with a fraud prevention database and in not removing the information when Mr H asked it to."*

Godiva accepted my provisional decision. Mr H responded to explain how the marker was impacting him. He said *"My only option is to threaten the broker with a complaint to see if he is willing to come forward and own this otherwise I think I'll really struggle moving forward."*

Five days later the broker sent an email to Mr H, which he then forwarded onto us. The email says:

*"[Mr H] has communicated to me regarding the marker associated with his name and the explanation provided for it.*

*I can verify that I submitted the mortgage application.*

*[Mr H] had been convicted over 5 years ago and therefore I assumed this doesnt [sic] need to be declared as it was over 5years ago, I wasnt [sic] aware any conviction over 4 years is never spent. This was only explained to me after the case was declined."*

Our investigator passed the broker's email to Godiva for its comments on whether it would remove the marker. It declined to do so and so the case has now been returned to me for a decision.

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

I've carefully considered what Mr H has said and provided in response to my provisional decision, including the email from his broker. Unfortunately the email doesn't help matters as it provides another recollection of events, which doesn't tie in with what Mr H has said.

There's no dispute that the broker submitted the application, so it is the next section of the broker's email that is key.

The broker said that he was aware of Mr H's conviction but assumed it didn't need to be declared as he wasn't aware any conviction of over four years is never spent.

But that doesn't tally with what Mr H told Godiva in the call on 12 September 2022:

- he'd got three other mortgages and for every application he answered that question in the way it should be answered,
- he was aware that any sentence over four years is never spent, but that wasn't why he was making the complaint. He said he was making the complaint because his broker

- didn't ask him that question,
- he always declares his conviction and his other mortgage lenders are fine with it because it isn't fraud related
  - his other lenders always ask and he declares it,
  - it was a new broker he used for this application and the broker didn't ask.

We know Mr H's previous mortgages had been applied for through the same broker, so it follows that if the broker answered that question correctly previously then he would have known the correct answer here.

I won't detail again here all the inconsistencies in what Mr H told Godiva as they're all set out above in my provisional findings.

As I explained in my provisional decision

*"Mr H had the opportunity to explain to Godiva what had happened following his call with the information service; that is, he'd made a mistake and not understood his conviction wasn't spent. Instead he gave different reasons for the non-disclosure, including some material falsehoods (such as that this was a new broker he'd not used before). Mr H then had an opportunity to complain to his broker about what he said had happened, but he was resistant to do so. As far as I'm aware that complaint still hasn't been made as Mr H has made no reference to the outcome of it which I would have expected him to do had a complaint been made. [whilst we now have an email from the broker, it still doesn't seem that a complaint has been made]"*

*Having taken everything into account, including the original application and all the calls, I'm satisfied the information Mr H gave across those amounts to a material falsehood, rather than an innocent mistake, and Mr H intended to mislead. It follows that I'm satisfied Godiva acted fairly and reasonably in registering the information it did with a fraud prevention database and in not removing the information when Mr H asked it to."*

Having considered everything again very carefully – including the recent email from Mr H's broker – I don't uphold this complaint for all the reasons given in my provisional decision.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 October 2023.

Julia Meadows

**Ombudsman**