

The complaint

Mrs J complains that HSBC UK Bank Plc closed her account and registered her details with CIFAS the UK's fraud alert service. Mrs J would like the marker removed and compensation.

What happened

Mrs J had an account with HSBC.

On 8 May 2019 Mrs J received £9,300 and £700 into her account.

On 10 May 2019 Mrs J transferred this money via online banking to four existing payees.

Mrs J said that her aunt Mrs S had asked her to help facilitate the transfer of £10,000 to pay for her son's tuition fees. These were needed urgently. Mrs S asked Mrs J to contact Mrs J's friend who I will call Mrs A to help, as Mrs A had previously used the services of a money transfer company which I will call G Ltd.

Mrs J said that using a banking institution in her country of origin would take a long time and the exchange rate would be prohibitive.

Following the receipt of the money, on Mrs S's instructions, Mrs J transferred it to four different payees outlined below.

Mrs J said that the funds were needed urgently to pay the tuition fees, and the transfer wasn't going to arrive in time to pay the fees. Because of this, money had to be raised through loans from other friends and family.

Because of this Mrs J said that she had asked Mrs A to transfer £2,000 to her own account in order that Mrs J would transfer money to her cousin.

The following payments were made from Mrs J's HSBC account on the 10 May 2019.

- £5,580 was sent to her cousin, a student at a UK university.
- £2,000 was returned to Mrs A for the original loan advanced.
- £1,000 to a textile company called A
- £1,750 to a textile company called B

Mrs J has said that £7,580 of the £10,000 received was paid as refunds to the student and Mrs A.

On 22 May 2019 these funds were reported as fraudulent by another bank I will call A. HSBC blocked Mrs J's account and conducted an investigation.

HSBC requested further information from the customer. HSBC said Mrs J didn't provide any information to them. On 28 August 2019 HSBC loaded a CIFAS marker and closed the account.

Mrs J complained to our service. One of our investigators looked into the complaint. He asked HSBC if they were willing to withdraw the marker. Mrs J told us she had sent documents to the bank which had been signed for by a bank employee. She showed us evidence of this. He forwarded the documents that Mrs J had provided to us.

HSBC didn't agree - they thought they had correctly applied the CIFAS marker. They provided our investigator with additional information regarding the nature of the funds. Following this he issued an opinion. He thought HSBC had done nothing wrong when they recorded a CIFAS marker against Mrs J.

Mrs J was unhappy with the view. In response she said she was an innocent party and had acted in good faith to help her aunt and cousin.

As there was no agreement the matter has come to me to decide.

In my provisional decision I said:

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 have reached a different conclusion from the investigator's and I'll explain why below.

CIFAS Marker

The marker that HSBC have filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mrs J was guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mrs J's account, whether they are retained or pass through the account.

Secondly, the bank will need to have strong evidence to show that Mrs J was *deliberately dishonest* in receiving the fraudulent funds and knew they were, or might be, illegitimate payments.

However, a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate complicity*.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I need to assess whether I think there is sufficient evidence to meet this standard of proof – and therefore, whether HSBC acted fairly in loading a CIFAS marker against Mrs J.

For HSBC to have fairly loaded a CIFAS marker against Mrs J they need to have evidence to show that Mrs J's account received fraudulent funds. I'm satisfied based on the

information provided by HSBC they've sufficient evidence that the funds paid into Mrs J's account on 8 May 2019 were fraudulent. I'm therefore satisfied that HSBC met the first pillar to load a marker.

But this isn't sufficient on its own for HSBC to load a marker, I need to be satisfied Mrs J was complicit in the fraud, so in summary was *deliberately dishonest* and knew the funds were fraudulent. So, I've moved on to consider this.

Mrs J has said that at Mrs S's request she contacted her friend Mrs A to help with the organising of a speedy transfer of £10,000 in order to pay the tuition fees for her cousin. Mrs A contacted G Ltd, who contacted a third-party company to transfer the money to Mrs J's account. Mrs J has said the money was to pay for tuition fees for her cousin. The money was paid to G Ltd and then the money was sent in sterling to Mrs J's account in the UK.– Mrs J sent the money to four different beneficiaries on the instruction of her aunt Mrs S.

Mrs J has always maintained that she was helping her aunt Mrs S get money to her cousin for his fees. Mrs J has been able to provide documents to support this in the form of statements from Mrs J's account and Mrs A's account, screen shots showing university fees being paid, as well as a letter from G Ltd confirming Mrs J had paid the equivalent of £10,000 in local currency into their account and they had requested one of their clients pay Mrs J £10,000 in two payments of £9,300 and £700. She has also provided us with account statements for her cousin's account showing he paid his fees on 10 May 2019. As well as invoices from the textile companies. I have also seen WhatsApp conversations that support Mrs J's version of events.

Mrs J has provided information to back up her story. I acknowledge that there is a lot of complexity in how these transfers have been arranged. However, that of itself isn't enough to establish that Mrs J was complicit in the receipt of these funds. Mrs J has provided evidence of the money being received into her account and the money being paid into Mrs A's account and evidence from the money exchange company that they were used in this transaction. In addition, evidence was provided of the fees being paid and money going into the student's account.

I have considered that in the end the money didn't go to pay the student's fees. The payment of fees was the reason for the transfer, and the money wasn't used for its original purpose. I appreciate that the fees were paid before the money arrived. And although this might be considered suspicious Mrs J has provided a reasonable explanation for this as well as evidence of payments to the four beneficiaries mentioned and a note from Mrs S confirming the instructions for payments.

I think in this case Mrs J has shown a plausible explanation for the funds coming into her account and she has provided the evidence necessary to back this up. I think that if she was complicit, she wouldn't have so much evidence to show. In addition, I have considered that the bar for registering a CIFAS marker is high because of the potential impact this can have on someone's life.

In summary Mrs J has provided many documents from the different parties involved. Ultimately having looked at everything I think the story she has told us is convoluted, but she has been able to provide evidence to support it. I am willing to accept that she was an innocent recipient of fraudulent funds and it follows I think HSBC should remove the marker.

I have considered the compensation which should be payable to Mrs J. I note that she was without an account for a long time and she found it difficult to open a bank account. I think HSBC should pay Mrs J £300 for the distress and inconvenience caused.

So subject to any further representations by Mrs J and HSBC I was minded to uphold the complaint.

Replies to my provisional decision.

Mrs J agreed with my provisional findings. She said she would like more compensation, because of the impact this situation had on herself and her children.

HSBC disagreed with my findings. They provided information regarding the legitimacy of the funds being paid into Mrs J's account.

What I've decided - and why

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

I've also reconsidered my provisional findings in the light of HSBC and Mrs J's responses to my provisional decision.

I appreciate that HSBC have provided me with information about the legitimacy of the funds. And I accept that the funds that came into Mrs J's account were fraudulent funds.

However, in order to satisfy the second pillar of CIFAS, I have to examine Mrs J's story to decide whether she was deliberately complicit in the receipt of the funds. Mrs J has always said she thought these funds were legitimate funds. The funds were originally to be used to pay for university fees. I accept she didn't use the money for what she originally said it was going to be used for. However, she has provided evidence to us for each step in the transactions. In addition, Mrs J did not move the funds on immediately once they were in her account, which is what I would expect had she been complicit. I appreciate that the story that Mrs J has given is odd and convoluted, but it makes sense and as I've said the evidence is there to back every step. On balance I think she has given an explanation for why it's more likely that she was an innocent recipient of fraudulent funds.

Mrs J has agreed with my findings but would like to receive more compensation than what I have provisionally awarded. I appreciate Mrs J has had a difficult time because of the CIFAS marker that was applied and I have taken into consideration the evidence she has provided to me regarding the difficulties she had when deciding on the amount of compensation to award. I haven't seen anything to change my mind on this, so I won't be increasing the compensation.

For all these reasons and the reasons outlined in my provisional decision, my view of what the fair and reasonable outcome on this case is remains as set out in my provisional decision.

Putting things right

To put things right I require HSBC to remove the CIFAS marker and pay Mrs J £300 in compensation.

My final decision

I uphold the complaint and I direct HSBC UK Bank Plc to remove the CIFAS marker and pay Mrs J £300 in compensation for her material distress.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 22 March 2022.

Esperanza Fuentes
Ombudsman