

The complaint

Mr M complains that HSBC UK Bank Plc wrongly loaded a marker against him with CIFAS and unfairly closed his account.

What happened

Mr M received a payment into his account and several weeks later, HSBC received a fraud report from another bank I'll refer to as V. They reported the payment was the result of a scam. Mr M was asked to provide proof that he was entitled to the funds and visited a branch to show them text messages concerning the payment.

Mr M explained that the funds were for a property payment, whilst the report from V indicated the money was for the deposit for a vehicle. HSBC looked at the texts but weren't satisfied they were sufficient evidence that Mr M was entitled to the funds. HSBC later commented that the texts seemed to refer to a car purchase rather than a discussion about a rental payment.

Mr M's account was blocked whilst HSBC looked into the matter and Mr M said it would cost him money to access his storage facility to retrieve the relevant tenancy agreement that would support his case that the funds were legitimate.

Unbeknown to HSBC, V had removed the fraud report – effectively cancelling it. About five months after the report was first lodged (and about four months after it had been cancelled), HSBC closed Mr M's account without notice and lodged a marker with CIFAS – a national fraud prevention agency, in his name. HSBC also considered Mr M had been aggressive to staff in their branch – something that Mr M denied.

Mr M complained to HSBC about the way they'd handled his account and lodged the marker, but HSBC didn't change their position. Mr M then brought his complaint to our service for an independent review where it was looked into by one of our investigators. Shortly after registering the complaint with our service, CIFAS confirmed the marker had been removed by HSBC.

After reviewing the complaint details, our investigator didn't think that HSBC had acted unreasonably and didn't uphold Mr M's complaint.

Mr M disagreed and thought that the marker was loaded maliciously by HSBC. He believed HSBC must have known the fraud report had been removed by V before they lodged a marker against him. Mr M wanted a further review of his complaint, which has now been passed to me for a decision.

I issued a provisional decision where I said:

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

CIFAS

In order to submit a marker to CIFAS, there are certain “pillars” to satisfy and the relevant one here is:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;*

By the time HSBC came to process the marker, the report concerning the allegation of fraud had been withdrawn. So, in effect, there were no grounds at the point the report was submitted that HSBC could reasonably rely on to satisfy themselves that fraud or financial crime had been committed or attempted.

It's apparent that HSBC didn't believe Mr M's version of events, but it's difficult to see how HSBC's continued investigation concerning the marker was fair to him. Not only does it currently appear that HSBC's grounds had been retracted by V, but they then took over four months to complete their investigation. HSBC don't appear to have checked that the report was still extant at the time they lodged the marker and if they had, they would have realised it had been rescinded.

As regards Mr M's belief that the marker was lodged maliciously, I haven't found any evidence to support that. I appreciate HSBC have said they were waiting for information from Mr M and weight of other work delayed the marker, but I don't think it was reasonable to take so long to deal with this issue. I don't think HSBC lodged it maliciously, but I do think they failed to conduct their investigations in a reasonable time and failed to assess the relevant information necessary to meet the requirements of loading a CIFAS marker.

I understand the marker was removed by HSBC following contact from CIFAS, who themselves queried the time taken to carry out the investigation. I don't need to further consider whether the marker should be removed.

Account closure

HSBC took the decision to close Mr M's account with immediate effect, which was around the same time as they lodged the CIFAS marker.

There are notes that indicate HSBC considered Mr M was “aggressive”, but no evidence has so far been provided about that. Mr M on his part had denied he was aggressive towards the staff.

Following the issue of the fraud complaint, Mr M was able to use the account normally until he reduced the total to a few pounds. It was then left until it was closed several months later.

Whilst I think that HSBC could have closed the account differently – I don't think the immediate closure caused Mr M significant difficulties as he'd already stopped using it.

In summary, I've considered everything that HSBC has said in relation to its concerns here – but I don't consider that they've provided enough evidence to show that they've acted fairly and reasonably here. Mr M hasn't been specific about the impact this issue has had on him, but in his most recent communications he wished only for a review of his complaint and an apology from HSBC. So, at this stage I'd only be asking HSBC to apologise to him, where I've reviewed the complaint. But if there is any further impact he'd like me to consider, then he can provide further detail and evidence of this in response to this decision.

I invited Mr M and HSBC to give me any more evidence and information they wanted me to

consider before issuing my final decision. HSBC didn't have anything further to add and Mr M commented that:

- HSBC damaged his creditworthiness, personal finances and as a single director of a limited company, his business finances.
- They caused stress, anxiety, embarrassment, and financial loss.
- HSBC "*ruined my business and my credibility*".

Mr M remained critical of how HSBC used the CIFAS system.

I wrote to Mr M to ask him to provide details of his loss and the impact that the marker had on him that I could consider. He provided evidence of some loans that he'd been refused whilst showing that his credit remained strong. Mr M said he couldn't quantify the loss and he continued to argue that the marker also affected his business.

After considering the additional evidence supplied by Mr M, I wrote to both parties and said:

Mr M has provided evidence of a failed vehicle loan application which was made whilst the marker was in place. I asked Mr M to provide his credit file to establish his overall creditworthiness. Mr M's credit file didn't contain any obvious reasons why he wouldn't be considered for a loan. I appreciate it's difficult to be certain why the bank who considered the loan turned him down because they would have their own criteria to satisfy. But, the existence of an active CIFAS marker probably wouldn't have helped Mr M acquire the loan. Mr M also referred to a further issue with another bank that he believes is the result of the CIFAS marker, although the specific details weren't provided.

Mr M did also provide additional details concerning a loan application for a business. Here though the business is a limited company, so I can't take the application into account as they're a separate legal entity.

I've thought about the length of time the marker was in place and the ongoing impact caused to Mr M. It's apparent from the lack of credit available to him that he was likely subject to its effects even though he was unaware of it for some time. My understanding is that Mr M became aware of the marker several months before it was finally removed. So, taking all these factors into account, I'm currently minded to award Mr M a payment of £500 for the handling of the marker by HSBC and the impact this had on him.

I now invite Mr M and HSBC to send me any further information or evidence they'd like me to consider before I make my final decision.

HSBC didn't have anything further to add and Mr M responded:

- He remained of the opinion that the impact on his business should be taken into account because he's the sole director and HSBC treated his limited company the same as a sole trader.
- The inability to obtain credit has affected his ability to make a living.
- The award of £500 was "*out of touch with reality*".

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.

I appreciate Mr M thinks that HSBC should also be responsible for the failure of his limited company to obtain credit. But, as I've explained, his company is a separate entity, even though Mr M is the sole director. The CIFAS marker was loaded against Mr M as an individual and not against his company. As this complaint is brought by Mr M through his relationship with HSBC as an individual – then our rules mean that I can only consider the impact on him in this way.

My powers to make awards are set out in the Financial Services and Markets Act 2000 (FSMA), the relevant section says:

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- *an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage... suffered by the complainant ("a money award").*

What that means here is that Mr M is the "complainant", rather than his limited company. Any award must be made based on his experiences and the impact the marker had on him. The DISP rules which this service operates under explains that to be an eligible complainant then a complaint must arise from matters relevant to certain relationships with the business being complained of (DISP 2.7.6R). Here, Mr M has such a relationship with HSBC, but his business doesn't.

Mr M has said that it's difficult to quantify his losses – and I can appreciate that. But he has said that he was refused credit as a result of the CIFAS marker. Lenders will consider a wide variety of factors before agreeing to lend and while the CIFAS marker will likely have had an impact on any applications he's made – it's difficult for me to fairly say that this would have been the sole reason he was declined for credit.

Lenders will consider a wide variety of factors before agreeing to lend to someone based on their own criteria. So, there are any number of reasons the lenders here may have declined Mr M's applications. The CIFAS marker may have had an impact but equally, while Mr M's credit file clearly shows he is a responsible borrower on the whole, there are some arrears showing on a credit card which may have impacted on these lenders' decisions too. So, I don't think I have sufficient evidence to say that HSBC can be held responsible for these lenders declining his applications here where there simply isn't enough evidence for me to do so.

I'd also note that one of his declined applications for credit was related to car finance. The credit file shows that a successful loan for a vehicle was made about three months later. So, whilst I accept that Mr M was, in this particular situation, inconvenienced and no doubt further embarrassed by the refusal to provide credit, his application to credit was eventually successful.

But HSBC's actions in loading a marker against Mr M have, following the evidence he's provided, had an impact on him. He explained how the marker affected him, including the anxiety, stress and embarrassment he felt. It's understandable given the failures of his various attempts to obtain credit and the steps he had to take to try and get HSBC to remove the marker, so I think it's reasonable to make an award to Mr M.

I explained my thinking about the award which is set out above and I've not seen anything that would change my mind. I understand Mr M will be disappointed with this award, but I think it's both fair and reasonable to award Mr M £500 for the impact the marker had on him. To be clear, this award is related to the distress and inconvenience he suffered by the

loading of the marker and isn't linked to any form of award for any losses he considers he suffered.

Putting things right

HSBC should now make a payment of £500 to Mr M for their handling of the CIFAS marker and the impact this had on him. As the marker has already been removed, I don't need to further consider that aspect of the complaint.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and they're instructed to settle this complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 January 2023.

David Perry
Ombudsman