

The complaint

Mr G is a sole trader. He complains about HSBC UK Bank Plc's actions when it closed his accounts and terminated a Bounce Back Loan (BBL). Specifically, he complains that the bank unfairly applied a Cifas marker against his name.

What happened

In June 2020 Mr G successfully applied for a £15,000 BBL from HSBC. On the application form, he used a projected figure for his annual turnover

BBLs were designed to help businesses get finance more quickly if they were adversely affected by the coronavirus outbreak. Under a government-backed scheme, lenders could provide a loan with a six-year term for up to 25% of the customer's turnover, subject to a maximum of £50,000.

During and after Mr G's BBL application, there were exchanges between him and the bank about his business turnover and his tax return. I shall discuss these in more detail below.

In November 2021, HSBC wrote to Mr G to advise it was ending their banking relationship after conducting an account review. Following this, Mr G contacted Cifas as he'd been declined a credit card by another provider and was advised to seek further information. Cifas is a fraud prevention agency with a database which records information to protect financial businesses and their customers. Cifas confirmed that there was a marker against him and the reason for the filing was the provision of false documentation.

Mr G said that he'd gone to great lengths to check that he was eligible for a BBL, and that HSBC shouldn't have granted the loan if that wasn't the case. Also, all funds that were obtained under the BBL were distributed for business purposes. Mr G said HSBC incorrectly and unfairly applied the CIFAS marker and he asked for it to be removed.

Our investigator looked at all the available evidence and recommended that the Cifas marker should be removed. She also recommended that the bank should reimburse Mr G for the solicitors' costs he incurred trying to challenge the marker, and pay £400 for distress and inconvenience. She gave the following reasons, in summary:

- Mr G had been trading before 1 January 2019 and, in those circumstances, the BBL application form made it clear that actual turnover should be used, not a projection. However, while the investigator thought part of the information given on the BBL form may have been inaccurate, she didn't think Mr G had tried to defraud the bank.
- At the time Mr G applied for the BBL, the bank asked him for a copy of his 2018/19 self-assessment tax return. Mr G was unable to provide that information, which he said he explained to the bank at the time. The bank approved the BBL.
- There's a dispute about what the parties said to each other. Mr G claims the bank had been happy at the time to accept projected turnover figures, while the bank say Mr G has since acknowledged that he knew he wasn't eligible but applied anyway.

Both sides have referred to phone calls, in June 2020 and August 2021, which they say support their respective versions of events. But recordings of the calls aren't available and therefore the investigator said she couldn't say for certain what was discussed.

- In June 2021, the bank asked again for a copy of the 2018/19 tax return. Mr G submitted a version, but the bank said it was unable to accept the document and advised him to contact HMRC for a full copy. He did this and sent it to the bank in September 2021. HSBC still wasn't satisfied and in November 2021 informed Mr G that it would end the banking relationship.
- The investigator looked at the information submitted by Mr G and asked about the anomalies which the bank had been concerned about. She was satisfied that Mr G's explanations were plausible. In particular, the appearance of a 2015 date on the tax return wasn't part of the submission – rather, it was the date that the form itself had been created, and HMRC had confirmed that it wasn't relevant. Also, the information showing Mr G had ceased trading in June 2018 was actually the date on which the nature of his consultancy business changed.
- Moreover, the investigator looked at the full HMRC tax assessment received from HMRC and compared it with the document submitted to the bank, and she found that the information and figures matched.
- The investigator therefore thought Mr G had provided plausible explanations for the information on his tax return. She also thought that if the bank had concerns, it could have approached Mr G or HMRC to seek further information. She said the criteria for applying a Cifas marker set an extremely high threshold and, based on the rationale and information she'd seen, she couldn't say that the bank had applied the marker fairly in this case.
- Mr G had instructed a solicitor to help him appeal to Cifas about the marker. He provided evidence that he paid £4,800 in fees. The investigator didn't think it was unreasonable of Mr G to have instructed a solicitor.

HSBC accepted the investigator's views in part and said it had since removed the Cifas marker. The bank was also happy to pay £400 for distress and inconvenience. But it said that the instructing the solicitor was a decision that Mr G had taken, so the bank didn't think it was appropriate to refund the fees – he'd been given referral rights to the Financial Ombudsman Service and information on how to complain free of charge. The bank has added that it's still unhappy with some of the information and format issues regarding the tax assessment documents submitted by Mr G.

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 that, I've reached the same conclusions as the investigator and for largely the same reasons.

The bank has agreed to the removal of the Cifas marker, which I understand has already been done. The main issue for me to determine is therefore whether Mr G's legal costs should reasonably be reimbursed. However, as the bank continues to express some concerns the veracity of the tax documents, I'll look at that matter first.

The HMRC self-assessment process is designed to work with commercial tax software where the customer uses such a facility. I'm aware that that some odd entries can appear on the pages generated in the process. I'm therefore not surprised that some parts of the draft return sent in June 2021 and of the HMRC copy sent in September 2021 had some formatting quirks which may have been carried through from the interaction with the commercial software. I've seen such anomalies before in genuine tax returns, and I've also seen date fields that don't reflect the tax year in question. I agree with the investigator that if the bank was concerned about such problems with the documents, it should have first pursued the matter further with Mr G or his accountant, rather than concluding the documents weren't genuine. I don't believe that the tax documents were an attempt to defraud the bank, and therefore I don't think the bank acted fairly in applying the Cifas marker.

I turn now to the matter of the legal fees. Usually, I would agree with HSBC that, as customers have the right to have their complaint determined by the Financial Ombudsman Service free of charge, it wouldn't be reasonable to require the bank to reimburse any fees incurred in obtaining legal assistance with the complaint. But that's not the whole story when it comes to appeals regarding Cifas complaints. The procedure for challenging Cifas markers requires the customer to raise the matter with Cifas direct, for an independent review, before referring the matter to the ombudsman.

The Cifas website makes this process clear and says *"If, following our investigation, we believe the filing was correct, but you would like to continue disputing the case, the next step is to contact the relevant regulator or complaints scheme for the industry. In most of our cases the relevant scheme is the Financial Services Ombudsman..."* Moreover, HSBC's response to Mr G's complaint shows that the bank understood that the next stage of the process should be the direct appeal to Cifas. The bank told Mr G's representative *"As outlined in the letter received by [Mr G] on 14 December 2021 from CIFA's – the first steps are to complain to the organisation who have requested the CIFA's marker and a Final Response Letter has been issued accordingly. The next steps would be to dispute directly with CIFA's."*

The legal fees in this case are not those incurred during Mr G's referral of the case to the ombudsman. Rather, they were incurred during his appeal to Cifas itself, which happened before the complaint came here, as required by the process set out by Cifas and explained by the bank. The investigator said she thought it wasn't unreasonable for Mr G to have instructed a solicitor for that appeal, because of the nature of the Cifas marker applied and the information required to appeal the decision. I agree with the investigator here. Facing a difficult matter with such serious consequences, I think it was reasonable for Mr G to have sought legal assistance for the Cifas appeal.

Putting things right

As I have now determined that the Cifas marker was applied unfairly, it follows that the bank should reasonably reimburse Mr G for his legal costs incurred during his appeal to Cifas before bringing the matter to Financial Ombudsman Service.

My final decision

My final decision is that I require HSBC UK Bank Plc to do the following:

- Remove the CIFAS marker against Mr G if it hasn't already done so.
- Pay Mr G £4,800 for legal fees he has incurred.

- Pay Mr G £400 in recognition of the distress and inconvenienced caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 October 2023.

Colin Brown
Ombudsman