

The complaint

Mr F is unhappy that HSBC UK Bank Plc applied a Cifas marker against his name. He wants the marker removed.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr F opened an account with HSBC on 15 September 2022. He received credits of £790 and £150 in the account on 13 and 15 October 2022 respectively.

HSBC wrote to Mr F on 24 October 2022 to explain they'd tried to contact him regarding the £790 payment as they required information regarding the credit. And that they'd blocked access to his account, with no further transactions being processed until he provided evidence and documentation to support the purpose of the credit. They asked Mr F to visit his local branch to verify the credit within five working days of their letter.

HSBC wrote to Mr F on 28 October 2022, in respect of the £145 credit, to explain the same – requesting that he visit the branch to verify the credit.

Mr F spoke with HSBC in early December 2022. Their records show that Mr F explained that the £790 credit was for the sale of tools but he was unable to provide evidence for this. And in respect of the £145 credit, HSBC's records show Mr F initially explained he didn't remember what it was for but later said that maybe he did – although he didn't provide any further information about it.

HSBC wrote to Mr F on 7 December 2022 to explain they were closing his account. And they confirmed it had been closed six days later – with a cheque enclosed for the remaining balance.

Mr F tried to open a bank account with another provider about ten months later but his application was rejected. This was because HSBC had applied a Cifas marker. Mr F complained to HSBC about this as he was unhappy that they'd accepted a third party's claim that they didn't receive goods paid for and had closed the cases without investigating it.

HSBC didn't uphold the complaint. They said the Cifas marker was applied in line with their terms and conditions of the account and so couldn't agree that it should be removed. It would therefore remain with Cifas for six years, at which point it would be automatically removed. HSBC explained they were unable to discuss the details of the investigation to provide a full explanation, but that they would provide it to the Financial Ombudsman (if the complaint was referred). They also added that the Cifas marker doesn't prevent organisations from accepting applications but allows them to make informed decisions.

The complaint was referred to the Financial Ombudsman. Our Investigator didn't think HSBC had acted unreasonably by applying the Cifas marker (misuse of facility). This was because, while Mr F had said the funds came from selling some second-hand power tools, he hadn't been able to evidence his entitlement to the funds. So, she didn't think HSBC had to do anything further.

Mr F disagreed and so the matter has been passed to me to decide. In short, he added:

- HSBC have applied this Cifas marker without probable cause and there is zero evidence to support their decision.
- He is the victim in this case as the buyer of the power tools knew exactly what they were doing when they called and requested to meet face to face for the items. And HSBC asked for proof of postage despite him telling them the items were collected.
- HSBC and the buyer's bank have nothing to show the power tools weren't collected. And these organisations cannot just side with one person here, as it's unfair with it being one word against another.
- His business has been operating successfully, selling power tools and building materials, for a number of years. And he has no means to fraudulently obtain funds for a couple of second-hand power tools, with it not being worth his while.
- He is currently without a bank and has no way of paying his mortgage or supporting his family due to how digital 2024 is. And he doesn't want to go down the legal route as it will cost a lot of money, which he has no way of paying without a bank account.
- There was in no way a misuse of facility and it's unbelievable sickening and inhumane to black ball someone from getting a bank account in 2024 when they are the victim in this matter.

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.

Mr F has explained the Cifas marker has impacted him greatly, as it has prevented him from opening a bank account which has made it difficult for him to pay his mortgage and support his family. I'm sympathetic to Mr F's situation and I note the challenges he's referenced due to the digital nature of modern banking. But while I know this won't be the outcome Mr F is hoping for, I don't think HSBC has unfairly applied the marker and for similar reasons as our Investigator. I'll explain why.

Mr F has shown that the Cifas marker HSBC applied was in relation to the £790 credit he received on 13 October 2022. And so, while HSBC did query the £145 credit too, I'll be focussing on the £790 credit here.

For the Cifas marker to have been applied fairly, HSBC needs to have more than a suspicion or concern. They must show they had reasonable grounds to believe that fraud or financial crime had been committed or attempted. And the evidence must be clear, relevant and rigorous.

Having considered the evidence carefully, I'm satisfied HSBC has been able to demonstrate they've met the first of the two standards I've listed above. HSBC has shown they received a report from a third-party bank showing the £790 transaction was reported as fraud by the account holder. This clearly meets the bar that there are reasonable grounds to believe that a fraud or financial crime has been committed. So, I've gone on to consider if HSBC has been able to meet the second of the above two standards.

When Mr F spoke with HSBC in December 2022, he explained the payment came from a customer for the sale of power tools but that he couldn't provide evidence of this.

Since referring his complaint to the Financial Ombudsman, Mr F has explained that his family businesses sell power tools and building supplies and have been running for many years. And these businesses make many deliveries daily which, despite having expected delivery problems at times, has never been an issue. These businesses however only sell new goods and not second-hand items. Mr F says he advertised the second-hand power

tools on Gumtree and that the buyer collected them in person. But he is unable to evidence this and he no longer uses Gumtree.

I've carefully considered what Mr F has said. Having done so, I appreciate that he is unable to provide evidence of delivery of the items given he says they were collected by the buyer. But given Mr F's family businesses involves selling these types of power tools, albeit he says new goods only, I would reasonably expect Mr F to have some record of these items – whether that be how they were acquired or the sale itself, such as an invoice. And although Mr F says he no longer uses Gumtree, I likewise consider it would've been reasonable to have expected him to have been able to provide a copy of this advert to HSBC – when he spoke with them in early December 2022 – to support his version of events.

In the absence of such evidence, I'm not persuaded Mr F has been able to demonstrate his entitlement to these funds for legitimate reasons. And so, I think HSBC had reasonable grounds to believe that fraud or financial crime had been made or attempted. It follows that I think it was reasonable for HSBC to apply the misuse of facility marker with Cifas. I therefore don't think HSBC has to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 June 2024.

Daniel O'Dell
Ombudsman