

The complaint

Miss M complains that HSBC UK Bank Plc unfairly loaded a Credit Industry Fraud Avoidance System (CIFAS) marker under her name.

What happened

Around December 2023, Miss M received a payment of around £1,500 into her account. Following this, HSBC restricted her account and later closed it with immediate effect. The bank also loaded a CIFAS marker under Miss M's name as it felt she had acted fraudulently.

After Miss M complained to the bank, HSBC issued its response explaining that it had acted fairly and in line with its terms. Remaining unhappy, Miss M asked this service to review her complaint. Miss M says:

- She doesn't know the third-party that sent the funds to her. She believed the funds had been sent to her on behalf of a friend of hers – who I'll refer to as "P".
- Miss M says she's known P since 2020 and has regularly carried out payments to him as a loan and has often received payments back. She says P has often asked her to send funds to third-party accounts and has also received payments from P from unknown third parties.
- Given the transaction history and friendship with P, Miss M didn't have any suspicions about the payment in question.
- Miss M says P had informed her that the payment was the return of funds P had borrowed as well as an additional amount as a gift to Miss M.
- Later the same day, P asked for the funds back and instructed Miss M to send the funds in instalments as the recipient account couldn't accept the full £1,500. Miss M then went on to send multiple payments of £500 via her HSBC account and other accounts she had transferred a portion of the funds to, in order to facilitate the payment.
- When asked, Miss M says she sent the funds back via different accounts and to different third parties on P's instruction, particularly as the first payment bounced back. Again, Miss M says this didn't arise her suspicions as something like this had happened in the past.
- Miss M has provided extensive copies of messages exchanged with P and the third-party she was asked to send the funds to, to corroborate her version of events.
- She's also provided historic records showing payments between her and P, as well as payments directed at P but sent to third parties instead.

Mr M is unhappy that HSBC failed to conduct an appropriate investigation in order to establish whether she was a party to fraud. She says the marker under her name has caused her mental health problems and has impacted her financial future. Miss M says she's now stuck in rental accommodation and her credit score has been impacted. She feels HSBC treated her like a criminal and racially discriminated against her.

One of our investigators reviewed Miss M's complaint and issued their opinion, asking HSBC to remove the CIFAS marker.

HSBC didn't provide a definitive response, so the complaint has been passed to me to decide.

My provisional decision

I recently issued my provisional findings on this complaint:

I need to clarify that this service is unable to make findings on whether something constitutes discrimination as per The Equality Act 2010. This is because this service is an informal alternative to the courts, and only a court of law can make a legal finding based on the definitions set out within the act.

However, I can consider whether the bank has acted in a fair and reasonable manner, and to do that I will take several things, including The Equality Act 2010, into consideration.

The marker that HSBC 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, HSBC isn't required to prove beyond reasonable doubt that Miss M is guilty of fraud or financial crime, but it 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*

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

HSBC will need to have strong evidence to show that Miss M was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. There's also a requirement that HSBC should've given Miss M an opportunity to explain what was going on.

So, in order to decide whether HSBC acted fairly, I need determine whether it had enough evidence to meet the above standard of proof to load the CIFAS marker.

Although I can see that HSBC asked Miss M some questions around the time, it doesn't seem as though she was given the opportunity to submit the records that she's since provided to this service. Miss M has sent us copies of messages exchanged with P in the past, around the time of the payment and following her account being restricted and later closed. She's also sent us messages exchanged with a third-party that she sent some of the funds to, whom she believed P to have been with at the time. Miss M provided historic records of payments sent between her and P and messages to show P had asked her to send funds to other third parties in the past.

Although I note that some aspects of the messages Miss M sent us are in a different language, there's enough there for me to be satisfied that Miss M's testimony about what happened is plausible. Miss M's understanding was that P sent her the funds via an unknown third-party and later asked her to send the funds to other third parties in instalments. I can see from the information HSBC sent us that the £1,500 payment was received around 8:30am on 17 December and it wasn't until around 11 hours later that Miss M began to transfer the funds out. The detail in the messages corroborates the timing of Miss M's account activity. And had Miss M indeed been a party to the fraud, I would've

expected her to move the funds out of her account immediately, rather than 11 hours later.

Moreover, the content of the messages doesn't suggest that Miss M had cause to be suspicious that the funds were fraudulently obtained. Miss M has persuasively evidenced her history with P and provides a plausible explanation for why she had no cause to question the instructions received from P. I've also seen messages Miss M says she exchanged with P following her account being restricted until it was closed in March 2024. It's clear that Miss M is unhappy with what has happened with her account and often confronts P about it, as well as asking P to pay her back. Miss M also later suggests she would file a police report and seems to have gone as far as contacting an associate of P in an attempt to track P down.

I'm not satisfied that Miss M's actions around the time of the payment and in the months that followed are what I would deem to be actions of someone that has facilitated fraud. Miss M appears to have co-operated with HSBC's investigation and has openly attended the bank's branch regularly to withdraw funds. And the detailed evidence of communications she's sent us suggests to me that she's been open about her involvement and what she understood the circumstances to be at the time. Miss M doesn't appear to have benefited from the fraudulent payment either.

Therefore, I'm satisfied that Miss M was an unwitting party to the fraudulent payment and as such I plan on instructing HSBC to remove the CIFAS loading.

Miss M says the marker has caused detriment to her in line with what I've already summarised above. It seems to me that Miss M had readily available evidence to prove her version of events. And had she been given the opportunity to submit this evidence to HSBC, I think it's unlikely that the bank would've continued with its decision to load this marker under her name.

I'm mindful that Miss M hasn't submitted any medical records to evidence the health problems she says she experienced. But I do acknowledge that the knowledge of the CIFAS marker alone is likely to have caused considerable distress to her. Given the impact Miss M says she's suffered, I plan on asking HSBC to pay her £150 compensation for the distress and inconvenience caused to her.

Although HSBC raised a query about some of the evidence I've relied on, it didn't provide a response to my decision.

Miss M had no further comments either.

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.

Given there's no further points I need to consider, my decision remains the same.

Putting things right

For the reasons explained, I've decided to uphold this complaint. To put things right, HSBC UK Bank Plc should:

- Remove the CIFAS marker it loaded under Miss M's name.
- Pay Miss M £150 compensation.

My final decision

I'm upholding this complaint. HSBC UK Bank Plc should settle this complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 May 2025.

Abdul Ali
Ombudsman