

The complaint

A – a limited company complains HSBC UK Bank Plc unfairly applied a Credit Industry Fraud Avoidance System ('CIFAS'- the UK's fraud alert service) marker against its name.

A is represented by its director - Mr A.

What happened

A held a business account with HSBC which was opened in May 2020.

HSBC received reports relating to two payments made in early 2021 into A's account. HSBC wrote to Mr A on 14 June 2021 to explain A's account had been restricted and it gathered further evidence regarding the incoming payments from Mr A. Following its review HSBC applied a CIFAS marker against A for misuse of facility.

Mr A raised a formal complaint about the application of the CIFAS marker to A in late 2024. HSBC reviewed Mr A's concerns and in its final response letter dated 2 October 2024 it explained that the marker was placed in line with the account terms and conditions, and it was correctly applied. It confirmed that the marker would be in place for six years.

Mr A was unhappy with the response from HSBC and referred the complaint to this service. An Investigator looked into A's complaint and gathered the relevant evidence. The Investigator considered Mr A's comments but didn't think the complaint should be upheld. The Investigator explained this was because:

- The loading of a CIFAS marker was appropriate – HSBC hasn't made an error and has acted reasonably.
- Mr A's testimony and evidence wasn't sufficient in explaining the account activity in light of the other evidence available.

Mr A didn't accept the Investigator's findings and maintained HSBC had acted unfairly. In particular Mr A explained A had not been involved in any fraudulent activities and there is no evidence to show A was required to return funds. Mr A maintained the marker should be removed.

As no agreement could be reached, the complaint was referred to me – an ombudsman – for a final decision.

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 A was disappointed by the investigator's opinion. I'd like to reassure Mr A that I've considered the whole file and what's he's said. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I

think is a fair and reasonable outcome. No discourtesy is intended by me in taking this approach.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information HSBC has provided is information that we considered should be kept confidential. This means I haven't been able to share a lot of detail with Mr A, but I'd like to reassure him that I have considered everything that he and HSBC has told us.

When a bank is a member of CIFAS, it can record a marker against a customer when that customer has used their account fraudulently. This type of marker will stay on a customer's record for six years and will usually make it difficult for that customer to take out new financial products. CIFAS forms an important part of the financial services regulatory framework and is intended to assist in the detection and prevention of financial crime.

In order to file such a marker, HSBC is not required to prove beyond reasonable doubt that A is guilty of a fraud or financial crime, but it must show that there are grounds 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 is that HSBC will need strong evidence to show that funds that entered A's account were fraudulent. A CIFAS marker shouldn't be registered against a customer who has acted unwittingly – there must be evidence of a deliberate fraudulent action.

My role is to establish if HSBC has sufficiently demonstrated it has met the burden of proof set out by CIFAS to load the marker against A. HSBC has provided this service with details of the investigation it carried out following the fraud claim it received in early 2021. The investigation carried out is extensive and included a detailed review of A's account activity and the details submitted by Mr A. The information shared to this service as part of the review is considered confidential, and as explained above, I'm unable to disclose the specific details to Mr A of what HSBC's review revealed. However, I must assure Mr A that I have considered this evidence, alongside his submissions in detail.

In response to the Investigator's review Mr A says the CIFAS marker does not state the funds retained were illegitimate and he has provided evidence to show this. Mr A has provided details regarding the incoming payments being part of a gifting community Mr A joined during the pandemic. The evidence submitted includes screenshots of conversations regarding the payments. Mr A says the individuals claiming fraud have not followed the gifting community rules and haven't received gifts, and this explains their claims. I've considered Mr A's evidence carefully, but I'm not persuaded it clearly and effectively explains the incoming payments into A. I say this because A held a business account, and I can't see why the payments would be made to it as part of the gifting community. I also don't consider the screenshots provided by Mr A to be persuasive, and they don't demonstrate a clear entitlement to the funds A received.

My review of all the evidence has led me to the same view reached by HSBC – the evidence available equates to more than mere suspicion or concern of fraudulent activity. I therefore find that the marker was loaded fairly against A.

I appreciate Mr A will be disappointed with my decision and I fully appreciate the impact the

fraud marker is having on A. But I am satisfied HSBC acted reasonably in taking this action to discharge its regulatory obligations. I hope my decision provides some clarity around why I won't be asking HSBC to take any further action.

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 A to accept or reject my decision before 2 April 2025.

Chandni Green
Ombudsman