

## **The complaint**

A sole trader, who I will refer to as Mr P, complains that HSBC UK Bank Plc has unfairly applied a Credit Industry Fraud Avoidance System (“CIFAS”) marker against his name.

## **What happened**

In 2020, Mr P applied for and received a £21,000 Bounce Back Loan (“BBL”) to support his business during the Covid-19 pandemic. In line with the usual rules of this scheme, repayments were due to begin a year later.

No repayments were made to the BBL. HSBC wrote to Mr P several times about the arrears and received no response. So in early 2022, HSBC put the loan into default. The bank went on to load a “Category 6” marker with CIFAS for “mis-use of facility”. The reason given in the information lodged with CIFAS was “evasion of payment”.

Mr P complained to HSBC about the information it had reported to CIFAS. HSBC didn’t think it had done anything wrong.

I issued a provisional decision on 3 January 2025 provisionally directing the bank to remove the CIFAS marker. I said:

There’s no dispute that Mr P failed to engage with the bank once his loan fell into arrears. Mr P says he went into a branch twice to try and discuss the loan. But a branch isn’t the correct route for such a discussion. The bank have provided evidence that they wrote to Mr P repeatedly regarding the arrears and I can see that all these letters urged him to get in touch and provided him with the correct details (a phone number) by which to do so. The bank also made contact with him by phone on one occasion, but Mr P was concerned it was a fraudulent call and would not proceed and then did not call back.

It was Mr P’s responsibility to ensure he repaid his loan in accordance with the contract he’d signed. My conclusion is that he failed to do so. Whilst his mental health might have made that challenging at the time, I don’t think he gave the bank any opportunity to know that.

If someone fails to repay a loan, whether a business loan or a personal debt, the correct process for the lender to follow is to put the loan into default, recording a default against the borrower’s credit file. I don’t consider the bank made any errors in attempting to contact Mr P about the arrears and then following their default and formal demand process. However, a CIFAS marker is an entirely separate process.

CIFAS is a database used by lenders to share information about potentially fraudulent activity. There are a number of different markers that can be applied. In Mr P’s case, the marker that HSBC has filed is intended to record that there has been a ‘misuse of facility’ – in the form of evasion of repayment.

In order to file such a marker, HSBC isn't required to prove beyond reasonable doubt that Mr P is guilty of fraud or financial crime, but they must show that there are grounds for more than just 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 I consider this means in practice is that banks must be able to show they have strong evidence that their customer acted with deliberate dishonesty, in other words, that there was no intent to repay at the time of taking out the agreement. It follows from this that banks should also be able to show a reasonable belief that the failure to repay flowed from the dishonest intent rather than from financial hardship or other difficulty. So the decision for me is whether I consider there is sufficient evidence of this bad faith in Mr P's case.

Some of the bank's submissions to our service would appear to suggest that they believe Mr P had no intention of continuing to trade and indeed has ceased trading. I'm satisfied that neither of these assumptions is correct. I have seen evidence that Mr P operated a genuine business before the pandemic that continues to trade at the time of writing this decision. And I have seen no evidence that HSBC attempted to check this. Instead, the bank seem to have assumed that no activity through the business current account at HSBC meant that the business was not trading.

Mr P says he transferred his BBL funds into his personal account because that was the account through which he had always traded. He points out that there is nothing illegal about this. I agree that there is no law against this, although it does make it more difficult to distinguish between personal and business expenditure, which is why many sole traders choose to operate separate bank accounts.

Without having made contact with Mr P and with his banking elsewhere, the bank appear to have concluded that Mr P was evading payment rather than in financial difficulty. But I don't think HSBC have demonstrated that Mr P never intended to repay the loan. I think it is more likely than not that Mr P was in fact in financial difficulty at the time and that this, coupled with his poor mental health, explains his lack of contact with HSBC.

There is no argument that Mr P hasn't met his obligations under his BBL agreement. HSBC is therefore entitled to treat the loan as being in default. Mr P must accept the natural and fair consequences that stem from this. But, in all the circumstances of this case, I don't think one of those consequences should involve the bank loading a fraud marker with CIFAS.

I've considered the impact of the CIFAS marker on Mr P. He has told the bank that the marker has ruined his life, preventing him from remortgaging and making it difficult to fulfil his financial responsibilities as a carer. He has also mentioned the impact on his health and ability to sleep. I don't doubt that it has caused him considerable distress.

That said, for the reasons given above, I think Mr P must bear some responsibility here too. Had he made a more concerted attempt to discuss his circumstances with HSBC, then I think much of the impact he describes would probably have been avoided. For this reason, my current thinking is that it would not be fair for me to require HSBC pay any financial compensation for the distress or inconvenience suffered by Mr P.

Mr P has expressed his willingness to reach an agreement with the bank to repay the loan over an affordable period. I suggest he now demonstrates his good faith by getting in touch with the bank to agree a suitable plan.

Mr P accepted my provisional findings. HSBC did not. They said, in summary:

- The bank's use of the Category 6 CIFAS marker for misuse of facility was consistent with the guidance they had had from CIFAS.
- At the time of loading the marker, Mr P had had sufficient time to respond to their contact attempts and his lack of response indicated that he had no intention of repaying.
- Mr P was only engaging with the bank now due to the marker.

### **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 that the bank feels that they have correctly followed CIFAS guidance and treated Mr P consistently with other similar cases. But my role is to decide what's fair and reasonable in the individual circumstances of Mr P's complaint. The bank have not provided any additional evidence about Mr P's circumstances. For all the reasons set out in my provisional decision, I have therefore not been persuaded that the high bar for a fraud marker has been met.

I agree with the bank that Mr P was given sufficient time to respond to their contact attempts, based on the information they held at that time. I say this because the bank did not and could not, in my view, have known about any mental health vulnerabilities at the time. This is why I think it was fair for the bank to follow their recoveries process and declare the loan in default. But this does not mean that Mr P misused the BBL or took it out without ever intending to repay.

The bank feels that Mr P is only engaging with them now because of the CIFAS marker. HSBC cannot know this, but even if it were the case, I don't think it should alter my decision on the fairness of the Category 6 marker, since it does not change any of the facts that were available at the time it was loaded.

### **Putting things right**

HSBC must remove the information they have reported to CIFAS about Mr P.

### **My final decision**

I uphold this complaint and direct HSBC Bank UK Plc to remove the CIFAS marker against Mr P's name.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 March 2025.

Louise Bardell  
**Ombudsman**