

The complaint

Mr K complains on behalf of his business H, that HSBC UK Bank Plc unfairly restricted H's account and loaded a fraud marker on H's record with Cifas.

What happened

Mr K is the sole director of H.

H had a business account with HSBC.

On the 19 September 2019 a cheque of just over £24,000 was credited into H's account with HSBC. On the same day Mr K transferred out £9,000 to his personal account with HSBC and £8,000 to another account in his name with a third party bank. The majority of the remainder of the funds were withdrawn on the 20 September 2019. On transferring the £9,000 to his personal account with HSBC Mr K withdrew the funds in branch the next day. On the 27 September 2019 HSBC received notification from the sending bank that the cheque was *fraudulent* and proceeded to block H's account. They contacted Mr K and asked him whether he was expecting a cheque of £24,000 to be deposited into H's account. Mr K explained H had carried out some consultancy work for a business, and he'd transferred the money to his personal account to purchase a car. However this fell through.

Mr K complained to HSBC about the restriction to H's account. But HSBC didn't uphold his complaint. And on the 18 February 2020 the bank wrote out to Mr K to advise him they'd be closing all of his accounts, including H's account.

The bank also loaded a misuse of facility marker against H on the National Fraud Database with Cifas.

On learning about the Cifas marker Mr K made another complaint to HSBC – but they concluded they'd fairly loaded the marker to the National Fraud Database.

Mr K wasn't happy with HSBC's response so brought his complaint to our service. He said because HSBC had restricted access to his account his business was severely impacted and the Cifas marker stopped him successfully opening other accounts. And he'd like compensation for the disruption to his business.

One of our investigator's looked into his complaint but didn't uphold it. Overall, they concluded that although Mr K had provided evidence of a contract H had with a client, they thought on balance he knew that the cheque was fraudulent and therefore the Cifas loading was fair. He also felt that HSBC had acted fairly in restricting access to H's account.

Mr K didn't accept our investigator's view. Therefore it's been passed to me for a 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.

Having done so I've reached the same conclusion as our investigator for broadly the same reasons. And I'll explain why below.

The marker that HSBC have 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, they're not required to prove beyond reasonable doubt that H was guilty of a fraud of financial crime, but they 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 such that the member could confidently report the conduct of the subject to the police."*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered H's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that H was *deliberately dishonest* in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. However, a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate complicity*.

To meet the standard of proof required to register a Cifas marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I need to assess whether I think there is sufficient evidence to meet this standard of proof – and therefore whether HSBC acted fairly in loading a Cifas marker against H.

For HSBC to have fairly loaded a Cifas marker against H they need to have evidence to show that H's account received fraudulent funds. I'm satisfied based on the information provided by HSBC they've sufficient evidence that the cheque paid into H's account on the 19 September 2019 was *fraudulent* – by this I mean unauthorised by the drawing account holder. I'm therefore satisfied that HSBC have met the first pillar to load a marker. But this isn't sufficient on its own for HSBC to load a marker, I need to be satisfied that H was complicit in the fraud, so in summary was *deliberately dishonest* and knew the cheque was fraudulent. So I've moved on to consider this.

Mr K says that the £24,000 cheque paid into H's account was payment for a contract H was carrying out. He provided a copy of this contract to our service, and an invoice for the same payment amount H's account received. But this isn't enough for me to say H wasn't deliberately dishonest. And on balance I think H was likely *complicit* in the fraud. I say this because:

- Neither the invoice or the contract are specific about exactly what services H has provided the client.
- I find it strange that in the year prior to the cheque deposit less than £500 was paid into H's account. And for six of the preceding twelve months no transactions were carried out on H's account.
- Mr K informed HSBC during a review in early September 2019 that H had around 13,000 clients but he mainly receives payments via cash. I find it unusual that H's

account is operated in this way. And that prior to the £24,000 cheque there was such a small amount of account activity.

- The payee details on the cheque paid into H's account don't match the invoice or contract Mr K's provided.
- On balance I can't see any benefit to a fraudster in paying a fraudulent cheque into a random unsuspecting account.
- I find the account activity after the cheque was deposited unusual. On receiving £24,000 into H's account Mr K explains he transferred £9,000 to his personal account with HSBC to purchase a car. But this purchase fell through. He's not provided any evidence to support this. I also find it surprising the day after transferring the funds he withdrew the money in cash from his account. As well as transferring £9,000 to his personal account with HSBC Mr K also moved £8,000 to a personal account with another bank – which he advises was for wedding expenses – and withdrew most of the remaining funds via an ATM and a travel agency. All of this activity occurred within four days of the fraudulent cheque being deposited.
- I find it strange that Mr K moved a large proportion of the funds earnt from H's business contract to his personal account – and as explained above advised that these were going to be used for personal transactions.

In summary, I'm satisfied because of the reasons I've outlined above it's likely H was *complicit* in the fraud.

Account Restriction:

I've moved on to consider HSBC's actions in blocking access to H's account between the 27 September 2019 and when the account was closed on the 18 February 2020. I realise Mr K will be disappointed with my conclusion, however I'm satisfied that HSBC have acted fairly and reasonably here. I've looked at the terms and conditions of H's account, and I'm satisfied that HSBC applied these fairly.

The terms and conditions of H's account state:

19. Blocking payments and services.

We can block any payment device if we reasonably believe it's necessary because of:

- *A significantly increased risk in you being unable to pay any money you owe us on the relevant account; or*
- *Suspected fraudulent or criminal use of the payment device; or*
- *Security concerns.*

I understand that the restriction of H's account had a significant impact on H's ability to trade. However I'm satisfied in carrying out the restriction the bank followed the terms and conditions of H's account, and acted fairly.

Overall, I haven't concluded that HSBC have acted unfairly in their actions. And it follows I won't be asking them to do anything further here.

My final decision

My final decision is I don't uphold H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 20 January 2021.

Jeff Burch
Ombudsman