

The complaint

S is a company, represented in bringing this complaint by its director, Mr K. S complains that HSBC UK Bank Plc restricted access to its account before closing it. And registered a CIFAS marker against it. CIFAS is the UK's fraud alert service.

What happened

S opened a business account with HSBC in July 2019.

In December 2019 a cheque for just over £260,000 was paid into S's account using a machine in branch. In January 2020 another cheque for just under £390,000 was paid into S's account at a branch.

HSBC were contacted by the banks from which the cheques had been made. They said that their customers had been the victims of fraud, the cheques had been forged and S wasn't entitled to the money. HSBC placed restrictions on S's account whilst it investigated what had happened. And stopped the cheques from crediting S's account.

Mr K told HSBC that he didn't know anything about the cheques which were paid into S's account. He explained that S had an expected turnover of £25,000 and usually only dealt in much smaller transactions. HSBC didn't accept Mr K's explanation and gave S notice it would close its account. It also placed a CIFAS marker against S. Mr K complained to HSBC and said that he'd been unable to open a bank account due to the marker and his business had suffered financial losses. He also explained that he hadn't been able to provide financially for his family.

S through Mr K referred the matter to this service where one of our investigators considered it. He thought HSBC hadn't done anything wrong in taking the actions it did. On balance, he considered that Mr K was most likely aware of the nature of the cheques paid into S's account. Mr K didn't accept the investigator's conclusions, he maintained he'd been the victim of fraud, and he'd suffered a great deal of trouble and upset.

As no agreement could be reached the matter has come to me to decide.

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 the investigator and for much the same reasons. I'll explain why.

I'll deal first with the bank decision to block and review S's account. All banks in the UK are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. Banks are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict customers' accounts.

HSBC has said that S's account was blocked to meet these requirements. Having looked at all the evidence, I'm satisfied first of all that HSBC was within its rights to review S's account and that it was entitled to block it while it carried out that review. So, I can't say the bank did anything wrong here.

I'm satisfied that the cheques paid into S's account were fraudulent – in the sense that the holders of the accounts from which they were drawn didn't authorise them. Their own banks investigated them before reaching that conclusion and contacting HSBC. Of itself however, that doesn't mean that Mr K was involved or knew about them; it's possible to make payments to someone's bank account without their knowledge and having only the account number and sort code.

Before placing a fraud marker against S's name, HSBC needed to have a reasonable belief that a financial crime had been committed and that the evidence was such that the matter could be reported to the police. A suspicion or concern isn't enough. So, I've looked at whether HSBC was fair to apply the marker, based on the evidence it had and the investigation it carried out, and what the rules say about applying such markers.

Mr K told HSBC and the investigator he didn't pay the cheques into S's account. He's consistently said he knows nothing about the cheques. He has suggested that he's been the victim of fraud and that an unknown third party got hold of S's bank account details and paid the cheques into the account.

I've thought carefully about what he's said. Having done so I think it's most unlikely that an unknown third party would pay two cheques into S's account unless they were confident that they would be able to withdraw the money or transfer the funds to another account from which they could withdraw it. Mr K has told us that he never disclosed S's online banking information to anyone else. And has said that he is the only person in charge of S's finances and aware of the information which is kept locked in a safe at his home. I've also kept in mind that Mr K hasn't reported S's bank card lost. So, I can't see how an unknown third party would be able to access the funds that were paid into S's account. Based on the evidence I've seen, it appears only Mr K would've been able to do this.

I also don't think an unknown third party would run the risk of having to wait for the cheques to clear before being able to access the funds, which in this case would've been four working days, during which time Mr K may have discovered S's account had been compromised. And perhaps more significant, do this on two separate occasions weeks apart.

I note as well that Mr K increased the daily payment limit on S's account to £100,000 on 12 December 2019, just eight days before the first fraudulent cheque was paid into S's account. Increasing the daily limit would've allowed money to be moved out of S's account once the fraudulent cheques had cleared. Given what Mr K has said about the activity on S's account – that it normally dealt in small transactions, the account hadn't been used much since it was opened as the business had just been set up, and he was the only person with access to S's banking information, I think this action is significant. Mr K hasn't offered any explanation for why he did this. So, I think this suggests Mr K was most likely expecting the cheques that were paid into S's account in December 2019 and January 2020.

So, when I weigh everything up, I'm not persuaded by Mr K's version of events that he knows nothing about the cheques. Taking everything into account even if Mr K didn't pay the cheques into S's account himself, then I think he allowed someone else to do so.

In the circumstances, I think there would've been good grounds to report the events here to the police to investigate, and that HSBC was therefore justified in placing a CIFAS marker against S's name. I think it more likely than not that Mr K knew rather more about the

account activity than he's told the bank or this service – even if he hasn't directly benefitted from that activity. So, I won't be asking HSBC to remove the marker.

I then turn to the bank's decision to close S's account. It's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank must keep customer or require it to compensate a customer who has had their account closed.

Banks should however, give reasonable notice before closing an account. Usually, that means 60 days' notice, but it can be less – depending on the circumstances. In this case, HSBC closed S's account immediately. In my view that was reasonable, given the concerns the bank had about how S was operating its account. So, whilst appreciate this caused S inconvenience, I can't say HSBC have treated S unfairly when it decided to close its account without notice.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 11 January 2021.

Sharon Kerrison
Ombudsman