

The complaint

Mr A is unhappy HSBC UK Bank Plc has recorded a Cifas marker against his name. He disputes the transactions that took place on his account.

What happened

A cheque dated 26 April 2017 for the sum of £9,029.09 was credited into Mr A's account on 28 April 2017. Following this, several transactions took place until the account was blocked by HSBC in the early hours of 29 April 2017. HSBC eventually closed the account on 11 May 2017 without notice.

Mr A told us around the same time as these events he lost his card, when he left his bag on a train along with his PINsentry device and his mobile. He says inside his bag he had his banking details. Mr A said he believed a third party then used these details to access his account and deposit a cheque and make payments.

HSBC has a call recording from 26 April 2017 – two days before the cheque was deposited. During this call Mr A says he has lost his phone (although he doesn't mention he has lost his other banking details during this call) and asked to reset his secure key.

Mr A disputes the version of events detailed by HSBC. He says HSBC has not kept the CCTV footage which would have confirmed whether he made the payment. He feels HSBC has lied about the following:

- The date of Mr A requesting a renewal for internet banking.
- Following the fraudulent transactions there was a phone call made at a branch where Mr A reported all of this and HSBC says he ended the call; he didn't.
- HSBC has no further record of Mr A disputing these transactions until 2020 despite the fact throughout this period he has attempted to raise this with them.
- HSBC initially submitted the credit card payment that it made as evidence he was complicit in the fraudulent activity in an attempt to dupe this Service into believing HSBC's version of events.
- He has never been to the branch the cheque was paid in - so again further incorrect details.

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 HSBC has 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 record a marker like this, HSBC isn't required to prove beyond reasonable doubt (therefore it doesn't need to categorically show) that Mr A is guilty of a 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 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 either there was an attempt to put fraudulent funds into Mr A's account or fraudulent funds have entered Mr A's account and were either moved on or retained. And secondly, the bank will need to have strong evidence to show that Mr A was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

This can include allowing someone else to use his account in order to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting. There should be enough evidence to show deliberate complicity.

I'm satisfied based on the information provided by HSBC it has sufficient evidence that the cheque paid into Mr A's account on the 28 April 2017 was fraudulent. By this I mean it was 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 also need to be satisfied that Mr A 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.

The relevant finding for me to make, is not specifically what I conclude was most likely to have been Mr A's intentions and actions in relation to the funds. Rather, my role is to determine whether I think HSBC were entitled to escalate its concerns to Cifas based on the available evidence. I think, on balance, HSBC were entitled to do so. I say this because:

- I can't see any benefit to a fraudster in paying a fraudulent cheque into a random unsuspecting account.
- Mr A says he lost his card, mobile and banking details and that these details were used to access his account for the fraudulent activity on 28 and 29 April 2017. However, HSBC has provided a call recording from 26 April 2017 when Mr A mentions he has lost his mobile phone and asks to reset his secure key. It seems more likely than not that this was the date Mr A also lost all his other banking related details on the train. So, the fraudster would have needed to know the new details not the details he lost on the train.
- I find it strange Mr A mentions he had actually lost his mobile for a second time in response to the investigator's view. This isn't something he had previously mentioned to us or the bank and there is no record of this being reported. These inconsistencies undermine the credibility of Mr A's testimony.
- Mr A has not given us any plausible scenario where the new details were compromised. Whilst I accept it is possible, I think it would be unusual to lose a second mobile phone within two days of losing the first one.

- The bank's records from the time show numerous attempts to contact Mr A during May 2017 via various communication methods. This was a serious matter and the bank would have urgently wanted to make contact with Mr A. The account was in overdraft and Mr A owed the bank money - so I really can't understand why a bank would make up these attempted contact logs and simply just not make any attempt to contact Mr A.
- Mr A knew there was a bad debt associated with the account from his call with the bank in October 2017 but there is insufficient evidence to indicate Mr A made any further contact with the bank until 2020. Again, I can see no reason why the bank would not log details or ignore Mr A's attempts to contact it when he owed them money.

Due to the passage of time, HSBC no longer has any CCTV footage, but I don't think this would necessarily help Mr A - as a known third party could have deposited the cheque on his behalf.

I understand that Mr A told the investigator that he didn't make the credit card payment on 12 May 2017, which HSBC originally raised as a reason the fraudulent activity couldn't have been anyone else. I agree Mr A didn't make this payment, as his account was blocked before this. In the letter sent to Mr A advising of account closure, it also advises him his credit card account will be closed, so I agree with the investigator that it seems likely this payment was made by HSBC to settle the credit card balance. This finding has no impact on the overall outcome here.

So, based on the evidence I've seen, I think HSBC had sufficient evidence to conclude it was likely Mr A was complicit in receiving the fraudulent funds. So, I think HSBC has met the requirements to record the Cifas marker and I won't be asking it to remove it. I've also thought about whether HSBC closed Mr A's account fairly, and I'm satisfied it did. On 11 May 2017 HSBC sent Mr A a letter saying that his account would be closed immediately. I've looked at the terms and conditions of Mr A's account and I'm satisfied that HSBC acted within these terms when closing his account.

I realise this will be disappointing to Mr A but for the reasons above, I can't fairly say that HSBC acted unreasonably in registering the fraud marker against Mr A or closing his account, and I won't be asking them to remove the fraud marker it has registered.

My final decision

For the reasons above, my final decision is I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 July 2021.

Kathryn Milne
Ombudsman