

The complaint

Mr I is unhappy because HSBC UK Bank Plc blocked his account then closed it without giving any notice and have reported a “misuse of facility” CIFAS marker with the National Fraud Database.

What happened

The circumstances that led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, in June 2020 Mr I was expecting to receive some money from his father, who lived overseas, and was supporting him financially while he was at university in the UK. Mr I says:

- The money from his father was usually sent via a money transfer agent.
- On this occasion he received into his account £2,000 on 24 June, £1,500 on 25 June and £1,500 on 26 June. Yet he was only expecting to receive a total of £4,390. So he queried the excess amount with his father.
- His father queried the payment with the money transfer agent who said a mistake had been made and provided account details so that Mr I could forward the extra £610 to someone else.

• HSBC subsequently received notification from another bank that the third payment, for £1,500, had been sent by an individual who had fallen victim to an advanced push payment (APP) scam. Mr I's account was frozen while the matter was investigated and HSBC then decided to terminate their relationship, closing Mr I's account on 30 July 2020. It also reported a “misuse of facility” CIFAS marker to the National Fraud Database.

Mr I says he wasn't involved in the APP scam and think the bank acted unfairly in freezing his account, then closing it without notice and applying the CIFAS marker.

Our investigator thought HSBC had acted reasonably, on the whole, but didn't have sufficient evidence Mr I had been complicit in the APP scam. So she recommended the CIFAS marker be removed. HSBC disagreed, so the complaint has come to me.

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 much the same reasons. I'll explain why.

- The terms and conditions of Mr I's account allow the bank to close it immediately in certain circumstances. I don't think HSBC acted unreasonably when it did so, given that fraudulent funds have been received into the account.
- There seems no dispute that the person who sent the £1,500 to Mr I had fallen victim to an APP scam. But a transfer into someone's account of confirmed fraudulent funds, and

the account holder then transferring that money out is not sufficient evidence for the bank to report a CIFAS marker against the recipient of those funds (Mr I, in this case). HSBC should only make a report where it has relevant and rigorous evidence such that it could report the matter to the police. In other words, it must have, at the very least, a reasonable suspicion that Mr I had committed or attempted to commit an offence. This would require an element of intent and dishonesty and I don't think the evidence suggests Mr I was involved in, or had any knowledge of, the APP scam.

- Mr I has been consistent in his account about what happened and I can see historic transfers into his account which mirror payments his father has sent via the overseas money transfer agent. HSBC has identified no other suspicious activity on Mr I's account. And the bank that received the £610 transfer from his account has confirmed it has no concerns about the activity on the receiving account. Given all the evidence I've seen, I find Mr I's explanation about the receipt and onward transfer of the fraudulent payment to be plausible and persuasive. I think it's more likely than not he unwittingly received and forwarded the proceeds of fraud.

Overall, I think HSBC has acted unfairly here and I'm not persuaded it met the test in reporting the CIFAS marker.

My final decision

My final decision is that I uphold this complaint and instruct HSBC UK Bank Plc to arrange, with immediate effect, for the CIFAS marker to be removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 11 January 2022.

Ruth Hersey
Ombudsman