

The complaint

Mr S has complained that HSBC UK Bank Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In November 2019, Mr S set up a current account and two savings accounts with HSBC. He received £5,800, which was later confirmed as being money obtained by fraud. This money was transferred between his accounts, then there were attempts to send it onto third parties using his mobile banking app.

HSBC called Mr S about this, who disconnected the call. They tried phoning him and writing to him multiple times, but did not hear back. They closed his accounts and registered a CIFAS marker for misusing his facility.

In August 2020, Mr S appealed the marker. He explained he'd been under a financial burden and had acted in desperation. He said that his lack of financial support had pushed him into taking wrongful action. He confirmed he'd engaged with the fraud, having been introduced to a fraudster through social media. He said he gave them his bank credentials and card and was assured he'd be fine. But because of the marker, he'd now lost his job and was struggling to open a bank account elsewhere.

Our investigator looked into things independently and didn't uphold the complaint. While they understood Mr S's reasons for partaking in the fraud, the fact remained that the money had belonged to victims of crime and Mr S had willingly let fraudsters use his account. So they found that HSBC had added the CIFAS marker correctly.

Mr S then offered a different version of events. He said a very close old friend had asked him to help them transfer money to their parent. Mr S now said he hadn't done the transactions or helped the friend do them or given them his bank credentials. He said the friend accessed his home while he was abroad and made the transactions without Mr S's permission. He said the friend only told him about this afterwards, then blocked him. Mr S said he had not been involved with the transactions. He said he hadn't reported the friend to the police as he felt the police weren't effective.

The complaint was passed to me to decide. I sent Mr S and HSBC a provisional decision on 26 July 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, HSBC were not required to prove beyond all reasonable doubt that Mr S had tried to do something wrong. They did have to have reasonable grounds to believe he'd misused his account, going beyond a suspicion or concern, and with appropriate evidence to support this. I've carefully considered everything that both sides have said and provided, and I think that HSBC did have sufficient grounds to register the marker. I'll explain why.

The money Mr S received has been confirmed as fraudulent. And his accounts were used to try to pass it on. The question, then, is whether Mr S knowingly took part in the crime.

Initially, Mr S appears to have admitted that he did indeed co-operate with a fraudster and let them use his account for this. He accepted he'd "engaged with the fraud" and taken "wrongful action".

Mr S's new testimony completely contradicts his original testimony. Whereas before he said he'd knowingly given access to his account to a fraudster he'd just met, he now says a close friend did this all without him knowing and without Mr S giving them access. This is such a drastic change in his story that it makes it very difficult for me to find his new version of events to be plausible.

We asked Mr S why he'd given such contradictory testimony. He said he'd asked someone for help with this and they'd advised him to say what he originally said. But if Mr S's new testimony is true, and he never knew about the fraud until afterwards, then I can't see why anyone would ever advise him to give a false confession to a crime he didn't commit. Nor can I see why he'd make up a story about a fraudster or admit to giving them access to his account if he hadn't. I'm afraid what Mr S has now told us is simply not plausible.

Indeed, Mr S now says his friend made the transactions involved by accessing his home while he was away. But he also now says he never gave this friend his account credentials. So if that's the case, then I can't see a likely way the friend could've accessed Mr S's online banking. Mr S had never used this account for anything else before, so there wasn't an opportunity for the friend to watch Mr S using his account on a previous occasion and learn his security details that way.

Further, Mr S now says he was abroad at the time. And according to his latest submissions, he was messaging his friend from his mobile phone while abroad. But the transactions in question were made using Mr S's mobile banking, which was registered to the same number he's given us. So if Mr S was abroad with his phone, then it would not have been possible for a friend back home to have made these payments via his mobile banking.

Mr S provided images ostensibly of a messaging app history between himself and the friend, to show that the friend had said the money was for their parent and then later blocked him. But the images contain formatting errors and inconsistencies and do not appear to be genuine.

It's worth noting that Mr S's HSBC current and savings accounts were not used for any other purpose than the fraud. For example, he didn't pay any money into the savings accounts or pay any direct debits from the current account. As far as I can see, he opened the accounts, left them unused for over a week, and then the only thing they were used for were receiving and passing on fraudulent money. Further, he didn't respond to HSBC's calls or letters, nor question why his accounts got blocked or closed, which would not make sense if he intended to use these accounts genuinely. So this does not support Mr S's assertion that these were genuine accounts which got misused by a friend without his permission. However, it does fit with him deliberately opening the accounts in order to act as a money mule – and his original testimony did admit to engaging with such fraud.

In summary, the evidence shows that Mr S set up these accounts, then received fraudulent funds, and his accounts were used to try to pass that money on. His accounts were not used for any other purpose. Mr S originally admitted to being knowingly involved. And his latest testimony is neither likely nor plausible. Given the way the transactions involved were made, and given that Mr S now says he never gave away his security details, it wasn't realistically possible for anyone to have made them without Mr S's permission.

I understand that Mr S may have been acting out of financial desperation. But the fact remains that the money involved had been taken fraudulently from innocent victims of crime. And if Mr S knowingly and willingly took part in that – as he seems to have originally said he did – then I think it was fair for HSBC to register the appropriate marker with CIFAS. This is a difficult message for me to give, and I know it's a difficult message for Mr S to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 24 August 2021. But neither Mr S nor HSBC sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before – that in these circumstances, I think it was fair for HSBC to register the CIFAS marker.

My final decision

I don't uphold Mr S's complaint in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 September 2021.

Adam Charles

Ombudsman