

The complaint

Mr G complains that HSBC UK Bank Plc unfairly placed a fraud marker against his name, with CIFAS, the UK's fraud database.

What happened

Mr G had two accounts with HSBC. On 16 May 2019, £1,670 was paid into Mr G's savings account. This payment was then transferred to Mr G's current account. Following this, three payments were made using Mr G's mobile banking facility, to an individual I will refer to as Mr B. And a fourth attempted to another individual I'll refer to as T. Each of the four payments were referenced 'Holiday.'

The payment to T triggered HSBC's fraud detection system for additional checks. So, the bank sent a text message to Mr G's mobile phone asking him to get in touch and verify the payment. Mr G called HSBC and after going through some security questions he verified the four payments as genuine and were for a holiday. Mr G told the bank that T was his friend. He told the bank that he recognised the payments to Mr B, and these were also for a holiday.

Due to concerns about the payment to T, HSBC blocked Mr G's account and asked him to go into a branch with ID to reset his telephone and online banking. Mr G visited a branch on 17 May 2019 and confirmed that he'd been expecting the £1,670 that had been paid into his account, and it was from a friend. HSBC then removed the blocks from Mr G's account. Following this a number of ATM withdrawals were made from Mr G's account.

HSBC received a notification from another bank that the £1,670 that had been paid into Mr G's account was fraudulent. HSBC recovered £500 of the funds from Mr G's account – the rest had been spent. Following this HSBC closed Mr G's account and recorded a CIFAS marker against him. At the time Mr G wasn't concerned about HSBC's actions. However, around a year later Mr G needed to open a new bank account to have his wages paid but couldn't due to the marker. So, he complained to HSBC and asked them to remove the marker. HSBC declined his request, so he brought his complaint to our service.

Mr G says he had no idea the funds were fraudulent. He initially said that he'd given his bank details to a friend who he'd agreed to trade some game console coins of around £20. Mr G says his friend then told him that his relative had accidentally overpaid him by £1,650 – so he'd received £1,670 instead of just £20. He said his friend told him his relative would go to a branch with Mr G to withdraw the money. Mr G says he went to a branch, but the bank wouldn't let him withdraw any money. He said he told his friend's relative, but he didn't respond. And his friend told him not to worry about anything, but not to tell anyone about what had happened.

Mr G also said that he hadn't made any of the transactions which were made using the fraudulent funds and doesn't know Mr B or T. He said he'd had his bank card on him at all times and never disclosed his PIN to anyone else. He says he was elsewhere at the time of the ATM transactions and believes that his bank card must have been cloned. So, HSBC should remove the marker.

One of our investigators looked into Mr G's complaint. She said that the bar for recording a CIFAS marker is a high one. And she'd considered Mr G's explanation of what he'd said had happened, but she didn't think his explanation that he'd received the fraudulent funds 'by accident' was plausible. She also noted that Mr G hadn't said he'd lost his card or that his mobile banking had been compromised, and that he'd confirmed the transactions as genuine in a phone call with HSBC. And that Mr G had changed his story about what had happened. So, overall, she thought it was more likely than not that Mr G had authorised the disputed transactions. So, she said HSBC had acted fairly when it recorded the CIFAS marker.

In response, Mr G said he'd been placed under duress and felt pressured by his friend's relative when he went into a branch to withdraw the funds. He maintained that he never made any of the disputed transactions and that he was elsewhere when the ATM withdrawals were made. He said HSBC should have done more to stop them.

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.

HSBC says it applied the CIFAS marker because Mr G received fraudulent funds into his account and spent them. So, I need to consider whether the report to CIFAS was made fairly. HSBC needs to have more than mere suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the police.

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

So, I need to decide whether HSBC had sufficient evidence to meet the standard of proof and load a marker against Mr G. Having looked at all the evidence I'm satisfied they have, and I say this because:

- I've seen evidence from HSBC that another bank notified them that the £1,670 paid into Mr G's account on 16 May 2019, was fraudulent. And his account was used to pass it on.
- Mr G has changed his account of the key events, which are significant details that go to the heart of this complaint. And is contrary to the evidence. This makes it very difficult for me to place much weight on what he's said.
- Mr G initially told us he gave his bank details to his friend so that he could receive a payment of £20 in exchange for games console coins. And his friend's relative paid in too much money – an extra £1,650 to be exact, 'by accident.' But he hasn't provided any evidence to support this explanation such as any communication between his friend and his relative. If this explanation was true, I don't think it would be unreasonable for Mr G to alert HSBC and try and arrange for the money to be sent back. This didn't happen. Instead the money was spent.
- At the time Mr G told HSBC he was expecting the £1,670 and had only opened his savings account in order to receive the funds. From looking at Mr G's savings account statement, as far as I can see the account wasn't used very much at all prior to the fraudulent funds being paid in and had a balance of less than £40. I note too

that Mr G didn't respond to HSBC's letter, or question why his accounts were being closed, which would make sense if he intended to use the accounts for genuine purposes. And he only did so when he discovered the CIFAS marker. This suggests to me that Mr G did in fact open the savings account in order to act as a money mule.

- Mr G has also said that he didn't make any of the transactions that resulted in the fraudulent funds being spent. He's said he was elsewhere when the ATM withdrawals were made. So, says his bank card must have been cloned.
- I don't think Mr G's card was cloned. I say this because the bank's technical evidence shows it was Mr G's genuine card and PIN that was used to authenticate each of the ATM withdrawals. This means that whoever made the transactions needed to be in possession of both Mr G's bank card and his PIN.
- Mr G also hasn't provided a plausible explanation for how someone else was able to become aware of his PIN. He's said he never disclosed it to anyone else, always kept his bank card on him. And was still in possession of his bank card when the ATM transactions were carried out.
- I know Mr G says he never carried out the transactions and has referred to CCTV evidence - however, whilst Mr G might not have appeared in the footage, it doesn't rule out the possibility that he allowed someone else to use his card.
- I've also kept in mind that the ATM withdrawals which led to the account being drained took place *after* HSBC blocked Mr G's online and telephone banking. I can't see how an unknown third party would've been aware of this information. And that in order to gain access to the remaining fraudulent funds in Mr G's account that they'd have to revert to using Mr G's bank card to make cash withdrawals.
- On 16 May 2019, four transactions (including one which was attempted) were made using Mr G's mobile banking. The technical evidence provided by HSBC shows that these were made using the same device Mr G used to make undisputed transactions. Mr G hasn't provided a plausible explanation for how an unknown third party was able to gain access to his mobile banking information which was needed to make the online transfers to Mr B and T.
- Given the way the transactions involved were made, and that Mr G says he never gave away his security details, it isn't realistically possible for anyone to have made them without his permission.
- When Mr G brought his complaint to us, he said he'd never heard of Mr B or T. This is contrary to what he told HSBC when he called the bank in response to a text message it had sent to his mobile to confirm the attempted transaction to T.
- I've listened to the call, and Mr G confirmed that the payments to Mr B and T were genuine. He told HSBC they were his friends and he was making the payments for a holiday.
- After being provided with the call recording by the investigator, Mr G accepts that he made the call, but, says he only did so under duress. I think this information is at odds with what he told HSBC – both when he went to the branch and when he called the bank. I haven't seen any evidence that shows Mr G wasn't an unwitting or willing participant in what happened.

In summary, for the reasons, I've explained, I'm satisfied that HSBC had grounds to believe that Mr G was involved in the dispersal of fraudulently obtained funds based on the evidence it had. I think it more likely than not that Mr G knew rather more about the account activity than he's told us and the bank. So, I think it was fair for HSBC to register the CIFAS marker.

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 Mr G to accept or reject my decision before 19 November 2021.

Sharon Kerrison
Ombudsman