

The complaint

Miss O complains that HSBC UK Bank Plc closed her account and registered a CIFAS marker.

What happened

Miss O says that HSBC closed her account in 2018. She only recently found out that a CIFAS marker had been added. This was when her account with another financial business was closed. She has had difficulty trying to open an account elsewhere.

HSBC said in its final response that it hadn't made any mistake and had closed her account. This followed a review taking into account transactions that had been made.

Our investigator recommended that the complaint be upheld and the CIFAS marker removed. She said that there is a high bar for a CIFAS marker to be added. HSBC had asked Miss O at the time about a fraudulent cheque for £14,190 that had been paid into the account on 12 December 2017. She had told it that she didn't recognise this and some other credits into and then paid out from her account at that time. As a result of these it had decided to close the account and had registered the marker.

Miss O had told her that she was away at around that time and that her ex-boyfriend knew her online banking details. She'd asked that her debit card be replaced but hadn't been given any advice about her online banking. Our investigator said that there was no evidence that Miss O had been complicit or had knowingly allowed her account to be used in fraudulent activity.

Miss O accepted the recommendation.

HSBC didn't agree. It said that Miss O hadn't mentioned the holiday when she had spoken to staff in a branch about the payments in February 2018. Miss O had also told it that her boyfriend had access to her details and PIN which was a breach of the terms and conditions of the account. The card on the account had been replaced in September 2017 and Miss O had then told it that the PIN hadn't been compromised. At the time of the credits the account seemed to have been used normally. It said that Miss O misused the account and broke the terms and conditions which led to the application of the marker.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, HSBC needs to have more than a 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 authorities.

The information is that the only payment into the account identified as fraudulent was the cheque for £14,190. It had been paid into an automated machine and was stopped that day by the branch. There is no record of it as a result on Miss O's statement and so she clearly didn't benefit from it. She wasn't it seems asked about this until February 2018, after her account had been identified for a review.

When the review took place, she was also asked about other credits that had entered her account and then been quickly removed. These for example included two credits of £2,000 on 5 December 2017 which were then transferred out. These weren't reported to HSBC as fraudulent, but Miss O said she didn't know about them. She said her boyfriend had access to her account.

There has been an inference drawn by HSBC between Miss O breaching the terms and conditions of the account and her being complicit in fraud. If her account details were known by someone else she trusted who could have made transfers online then the question is whether she was a witting participant in the attempted fraud. That specific issue doesn't seem to have been pursued with her further at the time.

I think that there was sufficient concern about the lack of care Miss O admitted she was giving to her security information for HSBC to decide to block and then close the account. Having listened to her call with this service she is understandably vague now about events over four years ago. But I'm not satisfied that HSBC has been able to demonstrate that she knew about the activity and was complicit in the attempted fraud through her account.

HSBC says that it applied the CIFAS marker because Miss O received fraudulent funds into his account. 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. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that HSBC needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Miss O's account of events and the evidence HSBC has provided, I'm not satisfied that HSBC had sufficient evidence for the CIFAS marker to be recorded.

My final decision

My decision is that I uphold this complaint and I require HSBC Bank UK Plc to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 23 May 2022.

Michael Crewe

Ombudsman