

Complaint

Mr G is unhappy that HSBC UK Bank Plc (“HSBC”) closed his account and recorded a fraud prevention marker against him.

Background

In September 2020, Mr G received a payment of £2,700.00 into his HSBC account. In March 2021, after it had been notified that the funds may have been obtained fraudulently, HSBC wrote to Mr G and asked him to provide evidence of the purpose of this credit. As Mr G didn't respond to this letter HSBC took the decision to close his account in June 2021. It then went on to register a fraud prevention marker against him.

After being told that HSBC wouldn't reopen his account and learning of the fraud marker, Mr G complained to HSBC. HSBC looked at Mr G's complaint and didn't uphold it. As Mr G remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr G's concerns. She didn't think that HSBC had done enough to show that Mr G was complicit in fraud and so it unfairly recorded the fraud prevention marker against Mr G. HSBC disagreed and so the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The marker that HSBC has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn't required to prove beyond reasonable doubt that Mr G is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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 HSBC must first be able to show that fraudulent funds entered Mr G's account, whether they were retained or merely passed through. Secondly, HSBC also needs to have strong evidence to show that Mr G was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr G having allowed someone else to use his account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

So in order to determine Mr G's complaint, I need to decide whether I think HSBC had enough evidence to show fraudulent funds entered Mr G's account and that he was complicit in this. It's important to note HSBC had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably here.

Having considered matters, there doesn't appear to be any dispute that Mr G's account was in receipt of fraudulent funds in September 2020. So I can understand why HSBC had concerns about the usage on Mr G's account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. HSBC also has to produce sufficient evidence to show Mr G was complicit in fraud. And I don't think that it has done that here.

Mr G has explained that a work colleague (who from this point onwards I'll refer to as C) asked if he could transfer some funds to his account so that these could be withdrawn. He said that C told him that he was unable to withdraw the funds from his account himself because he didn't have the necessary identification required to withdraw the full amount. Mr G says C told him he was going to use the funds to repay his uncle money he owed him.

Finally, he's said he didn't think too much of it at the time because he worked with C and trusted him. And it was only after his account was blocked that C explained he was paid a cut of the funds Mr G withdrew to pass them on to someone else. Our adjudicator found Mr G's version of events plausible and she thought that Mr G was unwittingly involved in fraud, rather than it being the case that he was complicit in it.

HSBC says the funds were withdrawn within minutes of being credited to Mr G's account and this mirrors the actions of someone who received funds, as a result of a scam. In its view, there was no reason for C to ask Mr G to withdraw the funds when he could quite easily have withdrawn them himself. It also confirmed that C was also one of its customers and he said he knew nothing about the funds when questioned about them himself. HSBC also questioned whether Mr G and C were even colleagues and why Mr G didn't explain this when asked about the funds in March 2021.

I've thought about what HSBC has said. And it isn't in dispute that the funds in question only ended up in Mr G's account as a result of a scam. But, as I've explained earlier, the mere existence of fraudulent funds doesn't on its own mean that it is fair and reasonable to record a fraud marker against a customer. Furthermore, the timeline HSBC has referred to actually supports Mr G's explanation that he was asked to withdraw the funds because C didn't have the necessary identification required to withdraw this amount of funds in branch. I also don't think that C saying he didn't know anything about the funds when his account was investigated casts any doubt on Mr G's version of events – especially as there doesn't appear to be any dispute that the funds in question were initially in C's account.

More importantly it is HSBC's responsibility to demonstrate that Mr G was deliberately dishonest and knowingly part of the fraud. And I think that it has failed to do that here. HSBC needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, a reasonable suspicion that Mr G knew the funds C would be transferring to him were fraudulent before he agreed to this and withdrew the funds.

Simply pointing out that fraudulent activity took place – especially where this isn't in dispute - just isn't enough to meet what is a high bar. This is especially the case seeing as the facts

and circumstances of this case appear to support Mr G's version of events being plausible. I don't think that HSBC having no record of Mr G's explanation prior to him making a complaint, or the uncorroborated assertions it has made about C's income categorically dispel the notion that Mr G and C were work colleagues, or undermine what Mr G has said.

Furthermore, there isn't any conclusive evidence indicating that Mr G made a financial gain either as the fraudulent funds in question were immediately withdrawn. So I've not seen anything to suggest that Mr G benefitted from the fraudulent funds and I would question why he'd knowingly participate in a fraud where he didn't stand to benefit.

Overall I don't think that HSBC had sufficient evidence to meet the test for recording a fraud marker against Mr G. As this is the case, I think that it was unfair for HSBC Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding this part of Mr G's complaint and HSBC needs to remove the fraud marker it has recorded.

I now turn to the closure of Mr G's account. The terms and conditions of Mr G's account permitted HSBC to close it as long it informed him it would be doing this at least two months in advance of doing so. I realise that HSBC provided Mr G with less than two months notice before closing his account. But by this stage Mr G's account had already been restricted for almost three months and Mr G had been asked to explain the purpose of the funds which had caused his account to be blocked.

I know that Mr G says that he and C went into branch to explain what had happened. But there isn't anything to corroborate this being the case and Mr G hasn't even told us which branch he visited either. As this is the case and HSBC has no record of receiving a response to its requests, I'm satisfied that its decision to close Mr G's account in the way it did wasn't unfair notwithstanding it failing to provide Mr G with two months notice. So while I understand why Mr G is disappointed at HSBC's decision to close his account, I don't think that it did so unfairly and I'm not upholding this part of his complaint.

My final decision

For the reasons I've explained, I'm partially upholding Mr G's complaint. HSBC UK Bank Plc should remove any fraud markers it has recorded against Mr G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 May 2022.

Jeshen Narayanan
Ombudsman