

The complaint

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

What's happened?

HSBC decided to terminate its banking relationship with Mr K in May 2018, and it registered a fraud marker against him with CIFAS shortly after. At the time, the bank was of the belief that Mr K had benefitted from fraudulent funds. His account received two fraudulent payments which Mr K withdrew/passed on immediately and, when the bank asked him to explain the source of the funds, it says he was vague and did not provide any evidence.

In summary, Mr K has said:

- He was astonished to discover that HSBC had recorded a fraud marker against him. He has done nothing wrong. In 2018, he fell victim to fraud when a person, who I'll refer to as M, responded to his employment request online. M said he would teach him to trade, and he thought it was a genuine opportunity, but it turned out to be a scam. M arranged payments into his bank account, and he moved the money on as instructed. The CIFAS marker is false and misleading.
- HSBC terminated its banking relationship with him without proper scrutiny of the situation. He shouldn't have lost his bank account due to being the victim of fraud.
- He believes that HSBC's actions in this matter were unacceptable, extreme, malicious, prejudicial and discriminatory. He is a person of good character and has a good financial history. The bank should've looked at the bigger picture. But it unfairly treated him like a criminal without any evidence that he had committed fraud.
- This matter has affected his finances and professional life.

Our investigator upheld this complaint. They understood why HSBC had terminated its banking relationship with Mr K, but they didn't think it was fair for the bank to record the CIFAS marker. They recommended that HSBC remove the marker and pay Mr K £250 by way of compensation for the trouble and upset it had caused him.

HSBC accepted our investigator's opinion and agreed to settle Mr K's case in line with their recommendations. But Mr K asked for an ombudsman's final decision. So, his complaint has now been passed 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.

I've seen that Mr K has mentioned a multitude of grievances against HSBC, and other parties, in providing his evidence. I have carefully noted what he's said but I will concentrate

my findings on the issues I think are central to the outcome of this complaint about the loading of a CIFAS marker.

HSBC has agreed to remove the CIFAS marker, and I think that's fair. From the evidence I've seen – including the communication that passed between Mr K and M – I'm persuaded that Mr K was the unwitting victim of a scam, and he didn't intend to facilitate fraud when he withdrew/moved on the fraudulent payments he received. I'm satisfied that it was reasonable for HSBC to terminate its banking relationship with Mr K in light of the fraudulent funds he received. But the bank needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities, in order to fairly report the matter to CIFAS.

HSBC has said that it loaded the CIFAS marker because Mr K withdrew/moved on the fraudulent funds, he didn't provide evidence of the source of the funds, and he gave a vague explanation for the source of the funds when he was questioned. I accept that this all may have been enough to cause HSBC to have a suspicion or concern. But this alone is not a good enough basis on which to register a CIFAS marker. The question is whether HSBC had sufficient grounds to conclude that Mr K intentionally attempted to commit fraud – the bank needs to be able to substantiate evidence that Mr K acted fraudulently and did not move the fraudulent funds on due to a mistake or misunderstanding. And it doesn't appear that HSBC carried out a significant enough investigation to determine this.

So, I'm pleased to see that HSBC has now agreed to remove the CIFAS marker and pay Mr K some compensation for the trouble and upset it's caused him. I think that's a fair and reasonable outcome to this complaint, and overall, I'm satisfied that £250 is a fair amount of compensation for HSBC to pay.

Finally, I have considered Mr K's belief that HSBC has acted in an unacceptable, extreme, malicious, prejudicial and discriminatory manner. Whilst I appreciate Mr K's strength of feeling, it's important to explain that our Service is an informal alternative to the Courts. That means we don't have the power to make a finding of discrimination under the Equality Act 2010. However, we do consider all relevant legislation and regulations when reaching an outcome we consider to be fair and reasonable – to both parties.

From what I've seen, I'm satisfied that HSBC's actions were driven by the way Mr K used his account, and the information it received when looking into those issues. As I've set out above, I'm not persuaded that the bank adequately assessed the situation before taking action, and I think it made an error in this respect. But Mr K did receive and withdraw/move on fraudulent funds, and I'm satisfied that this reasonably caused HSBC concern. It's for this reason I'm satisfied that the removal of the CIFAS marker and the £250 award is a fair and reasonable resolution to Mr K's complaint.

My final decision

For the reasons I've explained, I uphold this complaint and instruct HSBC UK Bank Plc (if it hasn't done so already) to remove the relevant CIFAS marker and pay Mr K £250 for the trouble and upset it's caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 March 2023.

Kyley Hanson
Ombudsman