

## **The complaint**

Mr A is unhappy that HSBC UK Bank Plc loaded a fraud marker against his name using the Cifas database.

## **What happened**

Mr A began to experience difficulties with his financial accounts. He made a request to Cifas asking what information it held on him, and on 15 January 2021 he received a response.

In the response, Cifas informed Mr A that a Cifas marker had been recorded against his name by HSBC on 14 September 2017. The marker was recorded as a misuse of his banking facility due to fraudulent funds being paid into his account.

Mr A complained to HSBC regarding the marker. He said that he was unaware of the activity referred to and that his account was hacked, and his card lost at the time

After looking into the complaint HSBC didn't uphold it. It said that Mr A's account was reviewed and closed due to activity it had detected; it found no evidence of hacking. And after reviewing the marker placed against his name, it found this was recorded correctly.

Mr A remained unhappy with HSBC's decision, so he came to our service for an independent assessment. An Investigator looked into the evidence provided by both parties but felt HSBC hadn't made an error. In summary, they pointed out that the evidence didn't suggest that it was likely Mr A's account had been hacked or compromised. They therefore felt that the marker was applied in line with the guidance set out by Cifas.

Mr A disagreed with the Investigator's assessment. He pointed out that he was a young adult at the time and was naïve around financial matters. He highlighted that his card, PIN and online banking details were kept within the same place and it was likely they'd been compromised. Additionally, he pointed out that he never reported his card as lost as it wasn't his main account and he didn't respond to contact from the bank as he didn't receive any.

As Mr A disagreed with the Investigator's assessment, the matter has now been passed to me for a final decision.

## **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.

The relevant considerations here are set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous such that the member [HSBC] could confidently report the conduct of the subject [Mr A] to the police.

Taking into consideration my interpretation of these rules, and what I think is fair and reasonable, HSBC must have more than mere suspicion or concern that Mr A was a knowing and witting participant in the activity. And it must have evidence to support its position.

While evidence is limited due to passage of time, I'm satisfied that HSBC has met the first point listed above. HSBC, back in 2017, received reports from a third-party source that Mr A's account had been used for illegitimate purposes. This is further supported by HSBC's attempt to contact Mr A via two separate contact methods and receiving no response. Mr A says that he didn't receive either of these, but I think that's unlikely. Mr A's telephone number was the same as the one our service has been provided as part of this complaint, as was his address. So, I find it unlikely he didn't receive either of these; and it adds weight to the argument of the account holder's involvement where they aren't engaging with communication.

Even after his account was closed, Mr A didn't question the reasons for this or question his entitlement to any money that was held in the account before the illegitimate activity began. I've considered Mr A submissions that he was young at the time—and this was not his main account—but I'm not persuaded that his age or experience with financial matters is enough to explain his lack of interest or engagement.

Furthermore, Mr A has told our service that his card, PIN and online banking details were lost, and all of these were kept next to each other within his wallet at the time. While it's plausible that this was the case, I don't find it likely that Mr A would have failed to report this fact to his bank. As I've highlighted above, prior to the activity on his account that led to its closure, there were funds within the account that Mr A likely would have wanted to access after losing his card and account information. He was also using the account regularly up until the point the activity began. So again, I don't find Mr A's explanation to be persuasive.

Lastly, after the disputed amounts entered Mr A's account, it was used to make an ATM withdrawal and a number of online transfers. According to the information still held on Mr A's account, only two activation codes were sent to access online banking, and both of these were sent to the mobile number our service has held on file. One on 30 December 2016 and the other on 7 April 2017: just prior to the disputed activity.

While I can't be sure what actually took place at the time the transactions, the evidence persuades me that HSBC loaded the marker at the time having correctly adhered to Cifas standards. And Mr A has been unable to provide any evidence or persuasive testimony that proves the Cifas marker should no longer remain against his name.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 September 2022.

Stephen Westlake  
**Ombudsman**