

Complaint

Miss C is unhappy that HSBC UK Bank Plc (“HSBC”) blocked her account, closed it and then recorded a fraud prevention marker against her.

Background

In August 2020, Miss C’s account received a number of payments. HSBC subsequently received notifications from the banks which sent some of the funds confirming that its customers had been scammed into making the transfers into Miss C’s account. HSBC placed a block on Miss C’s account while it conducted a review. As a result of its review it decided to close all of Miss C’s accounts and also record a fraud prevention marker against Miss C.

Miss C complained about HSBC restricting her access to her accounts and eventually about it recording a fraud marker against her. HSBC looked at Miss C’s complaint and didn’t uphold it. As Miss C remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss C’s concerns. She didn’t think that HSBC had done enough to show that Miss C was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss C. HSBC didn’t respond despite being provided with additional time to do so, so the complaint was passed to an ombudsman for a final decision as per the next stage of our dispute resolution process.

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 Miss C 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 Miss C’s account, whether they were retained or merely passed through. Secondly, HSBC also needs to have strong evidence to show that Miss C was deliberately dishonest in receiving any fraudulent payments and knew they were, or might be, illegitimate payments. This can include Miss C allowing someone else to use her account in order to receive illegitimate payments. 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.

In order to determine Miss C's complaint, I need to decide whether I think HSBC had enough evidence to show fraudulent funds entered Miss C's account and that she 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.

Having considered matters here, there doesn't appear to be any dispute that Miss C's account had been in receipt of fraudulent funds in August 2020. So I can understand why HSBC had concerns about Miss C's account usage and decided to carry out a review. While I understand Miss C's disappointment at the length of time it took to carry out the review, it's clear that there was quite a lot of activity which needed investigating. And given the circumstances, I don't think that it was unfair for HSBC to block Miss C's account while it was carrying out its review.

That said, while I'm satisfied that HSBC had reasonable grounds to block Miss C's account and carry out an investigation, this in itself isn't enough to register a fraud prevention marker against a customer. HSBC also has to produce sufficient evidence to show Miss C was complicit in fraud. And I don't think that it has done that here.

Miss C has explained that she met someone online who persuaded her that he'd got into financial difficulty and that he asked her and his friends to help. Miss C further explained that she was told to provide her account details to receive funds which she could then transfer on to him. Miss C has provided some of the messages she exchanged in support of her version of events. Our adjudicator found Miss C's version of events plausible and she thought that Miss C was unwittingly involved in fraud, rather than it being the case that she was complicit in it. She is also concerned that HSBC recorded the fraud marker despite having been in possession of this information.

I've thought about what the parties have said.

I want to start by saying that the important thing to remember here is that it is HSBC's responsibility to demonstrate that Miss C was knowingly and dishonestly involved in 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 Miss C knew fraud would take place when she provided her account details and transferred the funds which came into her account on. Simply pointing out that fraud took place and that Miss C transferred the funds in question, when she's never denied this is the case, just isn't enough to meet what is a high-bar. This is especially the case seeing as the messages Miss C has provided, which also appear to indicate that she lost some of her own funds, suggests that her version of events here isn't implausible.

Furthermore, there isn't any evidence indicating that Miss C made a financial gain either as the fraudulent funds in question were transferred elsewhere. Indeed, the content of the messages Miss C has provided suggests that she might well have lost some of her own money as a result of what happened. I would question why Miss C would send some of her own funds if she was knowingly participating in fraud.

Overall and having considered everything, I don't think that HSBC had sufficient evidence to meet the test for recording a fraud marker against Miss C. As this is the case, I think that it was unfair for HSBC to record a fraud prevention marker in the circumstances that it did.

I've considered what Miss C has said about the impact HSBC's actions have had on her.

Miss C has said that HSBC's actions put her in a situation where she couldn't pay her mortgage or bills. She had to open a new account and borrow money to ensure that she could pay her mortgage and provide for her son. Miss C has also provided copies of the letters she sent to HSBC explaining this.

I've thought about what Miss C has said and I'm sorry to hear about the difficult time she's clearly been through. But most of what Miss C has told us about happened as a result of the block that was placed on her account. I've already explained that as Miss C's account was in receipt of fraudulent funds, albeit without Miss C being knowingly involved, HSBC had an obligation to carry out an investigation and satisfy itself that any funds were legitimate before releasing them. So I don't think that Miss C's initial difficulties were caused as a result of HSBC acting unfairly or unreasonably.

That said, I do think that HSBC's decision to record a fraud marker after it had decided to release the funds, is likely to have had an additional impact. Although Miss C will have already had another bank account by this stage, the marker will have impacted her ability to access other financial products and will have caused her an amount of distress and inconvenience. As I don't think that HSBC should have recorded the fraud marker and Miss C experienced a relatively significant amount of distress and inconvenience as a result, I think that HSBC should pay Miss C £350 in compensation for its actions.

So overall I'm upholding Miss C's complaint and HSBC needs to remove any and all fraud markers it has recorded against Miss C and also pay her £350 in compensation.

My final decision

For the reasons I've explained, I'm upholding Miss C's complaint. HSBC UK Bank Plc should remove any and all fraud markers it has recorded against Miss C and also pay her £350 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 August 2022.

Jeshen Narayanan
Ombudsman