

The complaint

Mr S complains that HSBC UK Bank Plc blocked his bank account and placed a fraud marker against his name causing serious repercussions for him.

What happened

Mr S had a personal account with HSBC.

In January 2021, two payments totalling just over £2,000 were made into Mr S's account from another bank, which I will refer to as Bank B.

On 9 February 2021, Bank B contacted HSBC, to say that the two payments were fraudulent. And that its customer, Mr P, had been the victim of a scam. Following this notification HSBC blocked Mr S's account whilst it looked into the concerns raised by Bank B and how Mr S was operating his account.

On the same day, HSBC wrote to Mr S to let him know it had blocked his account and asked him to explain to the bank why he'd received the two payments. The bank asked him to come into a branch and provide evidence of his entitlement to the payments.

On 11 February 2021, Mr S called HSBC to complain that his account had been blocked. During the call he told the bank that he'd spoken to Mr P and that he had retracted the fraud report. HSBC didn't make any enquiries to confirm this with Bank B and told Mr S that he still needed to come into a branch with evidence of his entitlement to the payments.

On 22 February 2021, Mr S rang HSBC to say that he'd accidentally sent £600 to his blocked account instead of to an account he had with another bank, which meant he couldn't access the funds. He asked HSBC to release the money to him, but due to the block on the account HSBC declined. Mr S made further calls to HSBC to try and resolve things, but each time HSBC said he needed to provide the information it had requested regarding the two payments.

On 1 March 2021, HSBC emailed Mr S and told him that it was still conducting its investigation and again asked him to go into a branch and demonstrate he was entitled to the two payments made into his account from Mr P. In response, on 2 March 2021, Mr S sent HSBC an email attaching a copy of the letter to from Bank B to Mr P dated 17 February 2021, which confirmed Mr P had withdrawn his fraud claim.

HSBC says Bank B never notified them it was stopping its fraud investigation. And it never made any enquiries with Bank B about the scam report. So, on 9 March 2021 it went ahead and recorded a fraud marker against Mr S's name with CIFAS, the Credit Industry Fraud Avoidance System.

Mr S complained to HSBC. He said that HSBC shouldn't have placed a fraud marker against him and that he'd explained to the bank at the time that Mr P had been acting in bad faith when he lodged the fraud claim against him. He also pointed out that he had provided HSBC

with evidence that the fraud claim against him had in fact been withdrawn *before* HSBC decided to record the marker. So, he says HSBC treated him unfairly. In response, HSBC said it hadn't done anything wrong when it placed the marker against Mr S.

Unhappy with this response Mr S brought his complaint to our service where one of our investigator's looked into what had happened. Before reaching his view, he contacted Bank B for more information about Mr P's fraud claim. And made further enquiries regarding the circumstances that led to the fraud report being withdrawn. Bank B told the investigator that Mr P had contacted them on 10 February 2021 to withdraw his fraud claim against Mr S. And it provided the investigator with a copy of the letter it had sent to Mr P confirming this. The investigator sent the letter to HSBC. Following this HSBC agreed to remove the CIFAS marker it had recorded against Mr S. It agreed to do this in July 2022. However, due to an internal resourcing issue this wasn't done until 18 August 2022.

The investigator reviewed all the information and concluded that HSBC should have done more investigation before it placed the marker against Mr S's name and said there were delays in removing the marker. He recommended HSBC pay Mr S £300 compensation for the trouble and upset the marker had caused him. HSBC agreed. Mr S disagreed. He said the amount of compensation offered doesn't adequately reflect the amount of stress, upset and inconvenience he and his family have suffered as a result of HSBC placing a fraud marker against his name. He explained that as a result of the marker being in place, he'd had several bank accounts closed and struggled to open other bank accounts.

Mr S also said that his health had been badly impacted as a result of spending time on the phone with HSBC trying to sort things out, which he says he'd found very stressful. Mr S says after extensive tests he was eventually diagnosed with a minor heart condition that had been brought on by stress. After years of relatively good health and fitness, Mr S feels this was as a direct result of his dealings with HSBC and the appalling way in which he says the bank treated him.

As no agreement could be reached the matter has come 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.

block of account

Mr S says HSBC shouldn't have blocked his account and treated him unfairly when it refused to allow him access to £600 that he'd mistakenly paid into his blocked account.

HSBC restricted Mr S's account whilst it looked into the concerns expressed to it by Bank B about payments he'd received into his account. Having looked at all the evidence, I don't believe it was unreasonable in the circumstances for HSBC to have blocked Mr S's account. Fraud is a serious matter, and one way banks can help to tackle fraudulent payments is by restricting accounts when allegedly fraudulent payments are received into them. That's in line with what most banks would do in the same situation. And it enabled HSBC to consider how best to react to the report it had received from the other bank.

The terms and conditions of Mr S's account also permit HSBC to block an account and ask Mr S to provide information about payments made into his account. So, whilst I accept this caused Mr S inconvenience, I can't say HSBC treated him unfairly when it blocked his account. In reaching this conclusion I've also kept in mind that at the time Mr S appears to

have had at least one other bank account available for him to use. So, I think the impact on him would have been reduced.

Cifas marker

The CIFAS database used by the financial services industry is an important safeguard against fraud. Where a company suspects fraud it's not unreasonable for it to share that information with other firms to prevent further fraud.

The marker that HSBC recorded against Mr S is intended to record that there's been a 'misuse of facility' – in this case using an account to receive fraudulent funds. But there are significant consequences for individuals if markers are wrongly recorded against them. So CIFAS requires that its members only make a record where there is clear, relevant and rigorous evidence of fraud that could be reported to the police or other authorities (whether or not a report has actually been made). CIFAS principles also say that the business must have carried out checks of a sufficient depth meet the burden of proof set by CIFAS.

HSBC says it loaded the marker because it had received a scam report relating to funds Mr S had received, which he'd then spent. And because Mr S hadn't provided them with evidence of his entitlement to the funds when it had asked him to do so. I accept that Mr S didn't comply with HSBC's requests. But what he *did* do was to provide HSBC with evidence that the fraud claim had been withdrawn, which was significant information given the fraud report is what led to the CIFAS marker being applied.

I haven't seen any evidence that Bank B contacted HSBC to let them know that Mr P had withdrawn his fraud claim against Mr S. But I can't hold HSBC responsible for the actions of another bank. However, I would have expected HSBC to have reviewed the letter Mr S sent to them. But I haven't seen any evidence that the bank did so. I also think that the letter should have prompted HSBC to contact Bank B so that it could carry out checks to establish whether or not Mr S (as the original report claimed) had received fraudulent funds.

I think this would have been a reasonable course of action for HSBC to take. Especially given Mr S consistently told HSBC the fraud claim had been withdrawn and had provided evidence to support this. So, in this particular case, I'm not satisfied that HSBC carried out sufficient checks to satisfy the burden of proof required to apply the CIFAS marker. Taking everything that into account, I'm not satisfied that HSBC has provided enough evidence for me to conclude that it was fair to say the standard was met.

After our investigator contacted HSBC and told it about the enquiries he'd made with Bank B I'm pleased to see HSBC agreed to remove the marker on 5 July 2022. However, the marker wasn't removed until 18 August 2022. The investigator asked HSBC about the delays. In response, HSBC has said that the delay was due to 'unforeseen' issues. I accept that businesses have administrative processes to complete and requests which require approval. But unfortunately, HSBC haven't told us why it took as long as it did to remove the marker after it had agreed to do so. So, in the absence of any explanation from HSBC to the contrary, I can't be satisfied that it treated Mr S fairly and reasonably.

Mr S has written comprehensively about the impact of the CIFAS marker being recorded against his name had on him and his family. He's provided evidence that he had more than one bank account closed and says he had several applications to open accounts refused after the marker was applied. He's also told us about how his health was impacted.

From what M S said and the evidence he's provided I don't doubt that the marker recorded by HSBC has impacted on him. It's caused him a good deal of worry and upset. And the bank should pay compensation to him for not meeting the industry standards when applying

the CIFAS marker. In the circumstances, I agree with investigator that £300 is fair and reasonable compensation to pay in reflection of the distress and inconvenience caused to Mr S. I appreciate that Mr S strongly feels that his medical condition was caused by the stress of HSBC applying the marker to his name. But I have to tell Mr S that the evidence he's provided doesn't support that. I'm not a medical expert, but I am aware that medical conditions such as Mr S's are often caused by a number of complicated factors and I don't think it would be fair to hold HSBC responsible for Mr S's health problems.

I've also kept in mind that it appears Mr S was having a number of issues with other banks which were *not* directly related to the marker applied by HSBC. But instead were based on how he was operating *those* accounts. And regardless of the outcome of those issues, based on the information available to me I'm not satisfied that all of the issues Mr S was facing with other banks were caused by HSBC's decision to record a marker against him. I note too at the time the marker was recorded Mr S had at least one other bank account to use for at least a number of months following this complaint.

I acknowledge that Mr S has said that HSBC's actions have caused his family as a whole significant stress. I can appreciate that this may well have been the case, but this complaint is being brought by Mr S, not by other members of his family. And I can't make an award to reflect the distress others may have suffered. So, whilst I appreciate Mr S will be disappointed, I won't be asking HSBC to do anything more.

In summary, having considered all the circumstances of this complaint, including the events that led to the marker being applied and wider circumstances that led to it being removed, I'm satisfied that HSBC should pay Mr S compensation for the trouble and upset he's suffered. I consider £300 is reasonable to reflect what's happened.

My final decision

For the reasons I've explained, to put things right HSBC UK Bank Plc should pay Mr S £300 for the trouble and upset caused by wrongly applying a CIFAS marker against Mr S's name and the delays in removing the marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 February 2023.

Sharon Kerrison
Ombudsman