

The complaint

Mr W complains that HSBC UK Bank Plc unfairly lodged a marker against him with a fraud prevention agency.

What happened

Mr W held an account with HSBC some years ago when he was still at school. HSBC noted that a cheque had been paid into his account which appeared to be unusual as it was for many thousands of pounds. The cheque was deposited in a branch local to Mr W's address at the time.

It turned out that the cheque was counterfeit and was returned unpaid which meant that Mr W's account was never credited with the funds. HSBC asked Mr W to speak with them about it and he briefly visited his local branch. HSBC's records show that when they tried to discuss the background to the cheque, Mr W told them he had to return to lessons and would speak with HSBC at a later time. HSBC have no further record of Mr W contacting them about the cheque.

As a result, HSBC closed the account and lodged a marker against him with CIFAS, who are a fraud prevention agency. The marker was in place from around 2017 and Mr W has asked for it to be removed because he's told our service that he knows nothing about the fraudulent cheque that was deposited into his account and he's having difficulties opening a bank account.

Mr W's complaint was looked into by one of our investigators who thought that HSBC hadn't met the standards required before lodging a marker and recommended that it be removed, and that HSBC make a payment of £200 to Mr W.

Mr W accepted the recommendations, but HSBC didn't, they maintained there was no plausible reason for a cheque to be sent to a named account unless (here Mr W) was going to access it or had given someone else access to his account.

As no agreement could be reached, the complaint has now been passed to me for a 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.

CIFAS have strict standards before a marker can be lodged and the principal "pillars" are:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.
- That the evidence must be clear, relevant and rigorous.

HSBC had identified that a counterfeit cheque had been paid into Mr W's account and based

on this they had sufficient cause to believe a financial crime had been committed. As such I'm satisfied they met the requirements of the first pillar.

The second pillar requires HSBC to gather sufficient evidence to point to Mr W's likely involvement in the receipt and use of the funds. It's not sufficient just to say that the circumstances were suspicious – there must be some evidence that ties Mr W to the fraudulent funds.

Here I'd agree that circumstances were suspicious because his account received a cheque that was in Mr W's name, deposited in a branch close to his address at the time. Also, Mr W failed to provide any response to HSBC after they asked him about the cheque. On the face of it there doesn't seem much point in trying to pay a fraudulent cheque into an account without some way to get the money out. Either by Mr W himself withdrawing it or allowing another person to take the funds.

What happened here was that the cheque was returned unpaid because it was believed counterfeit. There was no opportunity to withdraw the cash and the evidence doesn't show that Mr W was involved, it only suggests it from the overall circumstances. I can see why HSBC were suspicious and lodged the marker because Mr W had also failed to return to the branch or contact them after confirming he'd return.

He later told me that he knew nothing about it and didn't return to the bank because he rarely went anywhere apart from school and home. He also said because he knew nothing about it, and it wasn't his, he didn't give it much more thought. He now realises he should have dealt with HSBC at the time.

Overall, I think the lack of evidence that shows Mr W had an active role in this means that HSBC didn't meet the standards required by CIFAS. I don't think it's sufficient to base a marker on the receipt of the cheque without evidence that he was aware of it. An account holder (here Mr W) has no control over what is received into their account. I accept that other factors pointed towards Mr W having some knowledge of it, but without that additional evidence, the lodgement of the marker was unsubstantiated. I've also thought about the age of Mr W who was around 16 at the time the incident happened, so I think it fair to say he wasn't experienced in banking matters and the implication of ignoring HSBC's legitimate questions.

Based on what had happened I think HSBC were well within their rights to close the account, but I don't think they met the appropriate standards required by CIFAS.

Putting things right

The marker has now been in place about five years and should now be removed. Also HSBC should pay Mr W £200 for the impact of not being able to open bank accounts.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and they're instructed to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 January 2023.

David Perry
Ombudsman