

The complaint

Mr C complains that HSBC UK Bank Plc added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Mr C says he sold a mobile phone online for £560 and gave this to the buyer on 6 June 2022. When he tried to move the money to his savings account he found that he couldn't do so. And he spoke to HSBC several times and submitted evidence about his entitlement to the money. He says he found it difficult to access other money in his accounts and the marker has affected his ability to apply for financial products.

HSBC said it hadn't made a mistake. It had received a report that the two payments of £299 and £261 received by Mr C that day had been obtained fraudulently. It said it hadn't received the evidence Mr C says he sent about the sale including a video of him handing over the phone before it issued a final response to his complaint. So, it concluded that Mr C was responsible for what happened, and his accounts were closed, and the marker added.

Our adjudicator recommended that the complaint be upheld, and the marker removed, and Mr C paid £150 in compensation for his distress and inconvenience. She explained that there was a high bar for adding the marker. Here Mr C had provided messages about the sale of the phone which he said were with the buyer. And these tied up with his version of what happened and would have been difficult to plan if they weren't genuine. He'd also provided a video taken from his house of the street showing the buyer arriving in a car and him handing over the phone. She didn't accept HSBC's argument that this wasn't genuine based on the quick look at the phone before it was accepted and that there was a 'fist bump' between the parties. She found what Mr C had said to be plausible and persuasive. And she didn't think he was complicit in what happened.

HSBC said it didn't agree and that it 'truly believes' Mr C was the scammer here or was working with a scammer. It said it had been able to show that fraudulent funds had been sent to Mr C's account based on the victim's report which it believes is plausible. Mr C had used his account irregularly, so it was unclear why he had done so here for what he says was the sale of a phone. It accepted that it hadn't been able to prove 'for certain' that Mr C was the perpetrator. But if he was unwitting it was unclear how a scammer was going to access the money and it said this would have been well planned. It said that the scam had all the hallmarks of concealment of funds noting the odd movements of money in and out of Mr C's accounts in the time before this happened. It noted that the buyer's name appeared to be a short form of Mr C's first name and believed this not to be a coincidence. And it thought a genuine buyer would want to give more than a cursory look at a phone.

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 won't be able to say *exactly* what happened and I'm thinking about what is *most likely*.

I need to consider whether the report to CIFAS was made fairly. On this point, HSBC needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS 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.

Unusually in this case Mr C has a significant amount of evidence about the sale and handover of the mobile phone. And based on what I've seen I'm also satisfied that he made early attempts to supply this to HSBC and seemed to have confirmation it had been uploaded.

HSBC's position is that this evidence was created for the purpose of the scam. Mr C says he was an innocent party and himself the victim. I note also that Mr C has recently provided a number of clear photographs of a mobile phone in a box with the original security seals and the 'IMEI' number visible. I can't know if this was the phone he says he supplied but if it was the presence of security seals and the buyer knowing his address may account for the relatively short time when the phone was handed over. If the scam was so well planned it seems unlikely that Mr C would give the buyer a name that sounded like a nickname for him.

I also point out that I haven't seen direct information from the person reporting this scam and from whose account the money was sent. I note that the payments were sent at 17:26 and 17:28 that day tying into the text messages Mr C has provided. And also, that although the scam is said to have started the day before it was reported at 18:05 and almost exactly at the time that Mr C shows he handed the phone over.

HSBC takes the view that this must have been about obtaining and moving on the money. But Mr C's explanation is that the person that defrauded him had the value of the phone - that was the benefit here. And so, I can see a scenario where it wasn't necessary to move the money on for a third party to benefit. In any event it seems that Mr C had tried initially to move the money to his savings account rather than transfer this on. His behaviour including in conversations with HSBC seems to me to be consistent with his version of events and overall, I consider him to be reliable in what he says.

That's not to say that there couldn't be grounds for suspicion about what happened and conflicting evidence and it's possible to draw adverse inferences about Mr C as HSBC has done. But there is a high bar for adding the CIFAS marker. I'm not satisfied that HSBC has shown this has been met and that it had sufficiently taken into account Mr C's explanation of what happened before it closed his account and added the marker. Having balanced all the evidence I'm satisfied that it's most likely that he was an unwitting participant in what happened.

It's a matter for HSBC to decide whether to offer him an account and in his complaint form to this service Mr C indicated that he no longer wanted accounts with HSBC. But I don't find that there was a reasonable basis to add the marker and so I agree with the resolution recommended by our adjudicator and which I consider fair.

My final decision

My decision is that I uphold this complaint and I require HSBC UK Bank Plc to:

- 1) Remove the CIFAS marker.
- 2) Pay Mr C £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 February 2023.

Michael Crewe
Ombudsman