

## **The complaint**

Mr F complains HSBC UK Bank Plc (“HSBC”) restricted and closed his account. He also complains HSBC has unfairly applied a fraud marker against him.

## **What happened**

In May 2019, HSBC received allegations from another financial business that Mr F had received two fraudulent payments into his account. As a result it blocked Mr F’s account. HSBC attempted to contact Mr F on two occasions, asking him to contact it.

Later, HSBC decided to close Mr F’s account and notified CIFAS (Credit Industry Fraud Avoidance System) who applied a ‘misuse of facility’ marker against him.

Unhappy with HSBC’s actions, Mr F complained. In its response, and in short, HSBC said it was unhappy with the operation of the account following a scam allegation it had received for two substantive payments. So it decided to close the account and notified CIFAS of its concerns.

Mr F then referred his complaint to this service. He says someone misled him and used false information on his account – and that it was something outside of his control. Mr F says that as a young person, not being able to get credit has severely affected his plans.

One of our Investigator’s then looked into his complaint. In summary, they found:

- HSBC has the right to review and block Mr F’s account without providing prior notice. And HSBC reviewed Mr F’s account in line with its obligations and terms of account, nor did it cause any delays
- HSBC isn’t obliged to provide an explanation for reviewing or closing the account
- HSBC were entitled to close the account, and complied with terms and conditions of it
- The credited into Mr F’s account were conformed as fraudulent. And, he hasn’t provided an explanation to show that wasn’t the case despite HSBC asking on two occasions. Because of this, they were persuaded HSBC carried out enough checks to meet the standard of proof needed to record a CIFAS ‘misuse of facility’ marker

Mr F did not agree with what our Investigator said. He says he’s in no position to disregard his rights as he is a civil servant to society, and he should be compensated. He also disagrees with the fact he’s unable to gain credit to meet his financial needs.

This complaint has now been passed 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.

Having done so, I've decided not to uphold Mr F's complaint. I know this will disappoint him, so I'll explain why.

Banks in the UK, like HSBC, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

Having looked at HSBC's reasons for restricting Mr F's account, I'm satisfied it hasn't done anything wrong here. I'm also satisfied that HSBC didn't cause any undue delay in carrying out its review.

HSBC is entitled to close an account just as a customer may close an account with it. But before HSBC closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account, which HSBC and Mr F had to comply with, say that it could close the account by giving at least two months' notice. And in certain circumstances it can close an account immediately or with less notice.

Having looked at the information given to me by HSBC, I'm satisfied it was entitled to close the account in the way that it has done. Mr F may want to know HSBC's reasons for restricting and then closing his account. HSBC is under no obligation to do this. But it did give Mr F some explanation in its final response.

#### *CIFAS marker*

The marker HSBC have filed with CIFAS is intended to record there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds.

In order to file such a marker, HSBC is not required to prove beyond reasonable doubt that Mr F is guilty of a fraud or financial crime, but they must show there are grounds for more than mere suspicion or concern. CIFAS 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 a bank must first be able to show fraudulent funds have entered Mr F's account, whether they are retained or pass through the account. Secondly, HSBC will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether HSBC has enough evidence to meet the standard of proof and load a marker for misuse of facility with CIFAS.

Mr F has, in so many words, said his account was under the control of someone who he trusted, and they misused it for illegitimate means. On the face of it, this suggests he was unwitting. But Mr F never responded to HSBC when it was investigating the matter despite it

attempting to initiate contact on at least two occasions.

Our Investigator has also sought to gain more information from Mr F about what happened. This is important as it allows Mr F to offer up evidence that could show he was unwitting as he asserts. But Mr F has not responded to these questions, and it appears as if he is evading them.

Given this behaviour, I'm persuaded, on balance, that there isn't enough evidence to conclude Mr F was unwitting. And to my mind, it's more likely because of this that he's been deliberately complicit.

So, it follows that I'm persuaded HSBC has acted fairly in applying a CIFAS marker. That means HSBC hasn't done anything wrong. I can understand Mr F feels his ability to get credit has now been severely impaired – but that is the impact such a marker can have.

### **My final decision**

For the reasons above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 February 2023.

Ketan Nagla

**Ombudsman**