

The complaint

Miss B complains that HSBC UK Bank Plc registered a marker about her at CIFAS, the national fraud database, and closed her account.

What happened

Miss B explains that the CIFAS marker is affecting her ability to obtain an account elsewhere and her future employment prospects.

HSBC said it hadn't made any mistake. Miss B had received three payments totalling just under £9,700 on 8 July 2022. Miss B had moved some of the money to a savings account. These payments had been reported by the sender's bank as fraudulently obtained. And HSBC had returned funds under an indemnity. HSBC said it had considered Miss B's explanation that this money was from her father for university fees. But that didn't explain why the payments had been reported as fraudulent. It closed her account in line with its terms and conditions.

Our adjudicator didn't recommend that the complaint be upheld. She said that HSBC had shown it had grounds to add the marker and close the account. Miss B hadn't been able to provide evidence to support what she'd said happened. And that there'd been an error or misunderstanding as Miss B had claimed.

Miss B didn't agree and wanted her complaint to be reviewed. She said she did have a university offer and she had no intention of moving the money on at the time. Her father had sent the money and not a random person. And she said that he'd only reported this because her account had been restricted. She said that if she and her father had known the implications this wouldn't have been reported and they'd have waited for the account to become unrestricted. Miss B said no one wanted to listen and when she'd been to a branch with her father she found her account had been closed. He hadn't reported this to the police as his bank had suggested so she didn't think there were grounds for the marker. She indicated that if we called her father, he'd confirm things and that he'd offered to pay for a lawyer for her. Miss B said that she'd tried to open other accounts, but they'd been closed.

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 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.

It's clear that HSBC received a report that the money paid into Miss B's account here had been fraudulently obtained. And it received an indemnity from the sender's bank for a return of the money. There is no evidence to support that the sender had retracted the claim of fraud. It's a matter for that person to decide whether or not to report things to the police.

I note from an email Miss B sent to this service in October 2022 that she stated she then had no longer had a relationship with family. She said that she'd been told that the money was for university fees but that this wasn't the real reason. And that her account had been used for paying money from and back to a business run by her father. The payments were possible as her father had sent her pocket money and a similar large payment that had been returned and so had her account details. By January 2023 she stated in an email that her father would be helping her with upcoming university costs. And as stated above that he'd offered to fund legal support with this matter.

The money appeared to come from a business account as Miss B says based on the statement narrative. I need to consider Miss B's explanation about this. If as she says the money came from her father it is unclear why he'd want this back very quickly. And would tell her this was for university fees. This was an explanation she gave to HSBC. It seems to me from the evidence from HSBC that her account was blocked because of the report of fraud not because of the size of the payments. And it's up to Miss B to support what she says with any evidence including from her father. Given she says that this is a family misunderstanding it does seem reasonable to expect her to be able to provide more. I haven't seen anything to back up her version of events and I don't think it's reliable. And so, I don't have a basis to think that she most likely had this money legitimately and that she was an unwitting participant in what happened.

HSBC says that it applied the CIFAS marker because Miss B received fraudulent funds into her account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that HSBC needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Miss B's account of events and the evidence she has provided, I'm satisfied that HSBC had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Miss B received fraudulent funds into her account and didn't report this at the time.
- She was in control of who had the benefit of this money.
- HSBC had grounds to believe that Miss B had attempted to access fraudulently obtained funds based on the evidence it had.

Given this finding I don't see that HSBC acted outside the terms and conditions in closing Miss B's accounts. I appreciate what she says about the impact of the marker but I'm afraid I don't have a reasonable basis to require HSBC to do anything further. If Miss B doesn't accept my decision she remains free to pursue this in court, as she's indicated she might, and subject to any relevant time limits.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 24 March 2023.

Michael Crewe
Ombudsman