

The complaint

Mr V has complained that HSBC UK Bank Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In 2021, Mr V received two payments around the same time – one for about £2,100, and the other for about £4,300. Both were reported as being acquired by fraud. A third customer also reported that someone had attempted to defraud them into paying Mr V money, though they had not gone through with it.

Mr V agreed to return the £2,100, saying he didn't know where it had come from. But he said the £4,300 was from a family member he'd lent money to. He later clarified it was actually a family member's boyfriend.

Mr V was unable to provide any evidence he was entitled to the funds. He said he'd lent the money in cash, which he'd received from gifts over the years, so he had no evidence of receiving or withdrawing the cash or giving it to the sender. He trusted the sender so much that he'd made no written agreement for the lending. He'd only ever spoken to the sender on the phone and so had no message history of any kind. He hadn't chased the money in any written form at any point. He'd had a falling out with the sender and they were no longer in contact, so he couldn't get any evidence from them now. He also had no evidence of this breakdown of their relationship. He hadn't told his family member about the lending and they'd since broken up with the boyfriend and lost contact, so he couldn't get any evidence from them either. He was unable to explain why the payment had come from a company rather than a personal account, or why it was a payment for tax, or why the sending bank reported it as fraudulent, or why his account was the destination for other fraudulent funds.

HSBC closed Mr V's account and registered a marker against him at CIFAS.

Our adjudicator looked into things independently and didn't uphold the complaint. Mr V appealed, so the complaint's 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.

In order to register this marker, HSBC were not required to prove beyond all reasonable doubt that Mr V had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I think HSBC did have sufficient grounds to register this marker. I'll explain why.

HSBC received official fraud reports from other institutions, stating that Mr V had received the proceeds of fraud. Another customer also reported that a scammer had tried to trick them into sending Mr V money around the same time. HSBC were entitled to rely on these multiple reports. I think that in this case, they had more than just a suspicion or concern.

Mr V has not provided any evidence whatsoever that he was entitled to these funds. Mr V sent in a receipt for the payment of around £4,300, which he felt was proof he was entitled to the money. But that receipt just shows that he *received* the fraudulent funds. It does not evidence that he was *due* the money in any way.

I'm afraid that what Mr V has told us is neither likely nor plausible. For example, it is simply not credible that he would have absolutely no messages with someone he lent thousands of pounds to, nor any history of chasing such a large sum. It's not credible that he would trust this person enough to lend them substantial amounts with no written agreement and no secure payment method, but that he would also have no evidence he actually knew them, no recorded history of ever contacting them, and that he would be completely unable to contact them now. It's not likely they'd only keep in touch by phone when they were in opposite time zones with international call rates. Mr V does not have a history of dealing in large amounts of cash. It would be unusual to keep such large sums of cash over the years and never deposit or spend them in any recorded way, and such a large sum is not very likely to have come from unreceipted gifts.

Realistically, if Mr V had lent such a large sum of money to a family member (as he told HSBC) or to a family member's partner (as he told our service) then there would be a large variety of easy-to-obtain evidence that he could provide to show this. Such as texts, emails, social media messages and so on discussing the lending or chasing repayment, evidence of sending or withdrawing the money, an agreement, discussions with related parties, and so on. But he has provided no evidence at all, and the payment was reported as fraudulent. The most likely reason for this is that Mr V knowingly and willingly received fraudulent funds.

Further, the £4,300 came from a company, not a personal account. That is not consistent with someone repaying a personal debt. And it was intended as a payment for tax, not a debt repayment. Again, that does not fit with Mr V's testimony. But it does fit very well with the multiple reports that Mr V was receiving payments through fraudulent deception.

Around the same time as this £4,300 payment, Mr V received other fraudulent funds, and another customer was almost defrauded into sending Mr V money. I acknowledge that Mr V voluntarily returned the £2,100. But it is not likely or plausible that it was a mere coincidence or mistake that Mr V was the intended recipient for at least three sets of fraudulent funds around the same time. There would be no good reason for a fraudster to pay their proceeds of crime to Mr V unless Mr V was involved. Indeed, Mr V appears to have been the main – if not the sole – intended beneficiary of these incidents of fraud.

Lastly, I've not seen any evidence that makes it seem implausible or unlikely that Mr V was knowingly and willingly receiving the proceeds of fraud.

In summary, Mr V received – or attempted to receive – multiple sets of fraudulent funds, which were confirmed as fraudulent from multiple sources. He's not provided any evidence of entitlement to the £4,300 he claims was his, even when such evidence should realistically be straightforward to get. And what he's told us is both unlikely and implausible. So I think it was fair for HSBC to register the appropriate marker at CIFAS. It follows that it was also fair for them to close his account, which they were allowed to do under the terms. This is a difficult message for me to give, and I know it's a difficult message for Mr V to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I don't uphold Mr V's complaint.

This final decision marks the end of our service's involvement in the case.

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

Adam Charles
Ombudsman