

Complaint

Miss C is unhappy that HSBC UK Bank Plc (“HSBC”) recorded a fraud prevention marker against her.

Background

In August 2020, Miss C’s account received a payment of £6,895.00. These funds were subsequently transferred on to other accounts. HSBC subsequently received a notification from the bank which sent the funds stating that its customer had been scammed into making this payment into Miss C’s account. HSBC reviewed Miss C’s account and as a result of its investigation, it decided to close Miss C’s account and record a fraud prevention marker.

After learning that HSBC had recorded a fraud prevention marker against her, Miss C complained to HSBC. HSBC looked at Miss C’s complaint and didn’t uphold it. As Miss C remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss C’s concerns. He didn’t think that HSBC had done enough to show that Miss C was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss C. HSBC didn’t agree and so the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The marker that HSBC has filed with is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Miss C is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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.”*

What this means in practice is that HSBC must first be able to show that fraudulent funds entered Miss C’s account, whether they were retained or merely passed through. Secondly, HSBC also needs to have strong evidence to show that Miss C was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

This can include Miss C allowing someone else to use her 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 complicity.

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

In order to determine Miss C's complaint, I need to decide whether I think HSBC had enough evidence to show fraudulent funds entered Miss C's account and that she was complicit in this. It's important to note HSBC had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, it is clear that HSBC received a fraud notification regarding a payment made into Miss C's account. So I can understand why HSBC had concerns about the usage on Miss C's account. And given fraudulent funds had found their way to Miss C's account, I think that HSBC was reasonably entitled to suspect fraud *may have* taken place and legitimately entitled to reach the conclusion that there was an immediate risk in keeping Miss C's account open. Therefore, I think that HSBC was entitled to close Miss C's account in the way that it did.

That said, even though HSBC may have had reasonable grounds for concern about the usage on Miss C's account and this was enough to justify its closure, it doesn't automatically follow that HSBC was entitled to register a fraud prevention marker. This is because in order to fairly record a fraud marker HSBC not only needs to have sufficient evidence to show that fraud may have taken place, it also has to have sufficient evidence to show that Miss C was complicit in any fraud that took place and that she acted dishonestly. And I don't think that HSBC has that here.

Miss C acknowledges receipt of the payments and the fact that she subsequently transferred the funds out of her account. She's said that she was befriended online and that after a series of messages where this person gained her trust, he asked her to do a favour for him and hold some money on his behalf because he was waiting for a new account to be opened. Miss C says she was persuaded to help and told to transfer funds onto another of her accounts before eventually transferring the funds to him.

I've thought about what Miss C and HSBC have said and there isn't anything I've seen in the evidence provided which directly contradicts Miss C's version of events. I also know that Miss C suffers from medical conditions which means that she wouldn't necessarily question the plausibility of what she's been told in the same way that others might. So while HSBC might question how Miss C might have fallen victim to this person in the circumstances Miss C did, Miss C's conditions coupled with her age at the time lead me to think that it's entirely possible that Miss C believed that she was receiving payments for someone who was legitimately owed the funds.

More importantly, it is HSBC's responsibility to demonstrate that Miss C was knowingly and dishonestly part of any fraud. And I think that it has failed to do that here. HSBC needs to have relevant and rigorous evidence. In other words, reasonable grounds for concluding that Miss C acted dishonestly because she knew that her friend would carry out fraudulent activity, or arrange for this to be done, when she agreed to receive the payment for him. And Miss C's medical conditions persuades me that she, as she says, did not realise that her actions could be perceived as dishonest.

As I've explained, it is HSBC's responsibility to demonstrate that Miss C was knowingly involved in fraudulent activity. And I think that all it has done here is demonstrate that fraudulent activity took place on Miss C's account, which isn't a matter that's in dispute here. Simply pointing out that fraud may have taken place, when Miss C accepted a payment for someone else when this has never been in dispute, just isn't enough to meet what is a high

bar. This is especially the case seeing as Miss C's version of events here appears to be plausible.

Overall and having considered everything, I don't think that there is sufficient evidence to meet the test for a fraud marker remaining recorded against Miss C. In my view, the evidence supplied does clearly indicate that it's more likely than not that Miss C knowingly and dishonestly participated in fraud. As this is the case, I'm upholding Miss C's complaint and HSBC needs to remove any and all fraud markers it has recorded.

My final decision

For the reasons I've explained, I'm upholding Miss C's complaint. HSBC Bank UK Plc should remove any and all fraud markers it has recorded against Miss C.

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

Jeshen Narayanan
Ombudsman