

The complaint

Mr B complains about HSBC UK Bank Plc's actions when blocking his account, subsequently closing it and returning the money back to its original source. Mr B is also unhappy HSBC have recorded a fraud marker against his name.

What happened

Mr B held an account with HSBC. Around March 2022, Mr B decided to sell a watch on a third-party platform and his HSBC account was used to receive payment when the watch was sold. The buyer sent the money in separate transactions, and after seeing the watch, didn't want to go ahead with the purchase, so asked for the money to be returned to a different account from where it was originally sent from. Mr B said he was allowed to keep £500 of the money for the inconvenience of the watch not selling. Mr B didn't have internet banking so had to go to the HSBC to make the transfer. On the same day as receiving the fraudulent money into the account, Mr B withdrew around £12,000 in cash.

Mr B says he called HSBC to check the legitimacy of the money received into his account, and says he was assured everything was fine.

HSBC received a fraud report concerning the payments in question, and therefore blocked Mr B's account. As part of their investigation, they asked Mr B for evidence of the sale advert and further clarification relating to the sale. Mr B said he'd provided this evidence in branch beforehand, but was unable to provide anything further as the potential buyer had now blocked him from the site he used to sell the watch on. Mr B also explained that the £12,000 he withdrew was money he was expecting from a solicitor following an accident and he withdrew this money to pay off debts amongst other things, as well handing over £2,000 of this to the potential watch buyers.

Mr B's account remained blocked while HSBC continued with the review. They did, however, inform Mr B he could access his benefits money from his account by attending branch with photographic identification.

A few days later, Mr B reported a burglary to the police – he says his safe was raided at home and the watch, amongst other things, was stolen. Mr B informed HSBC. He told our service he believes the burglary is linked to the potential buyers of the watch.

Following the review, HSBC decided to close Mr B's account and register a Credit Industry Fraud Avoidance System (CIFAS) marker against him. Mr B says he feels he has been a victim as he has lost out on the watch, and around £6,000 of his money.

Our investigator reviewed things and didn't think HSBC had acted unfairly. In summary, he said they were entitled to review, block and close the account and was satisfied the CIFAS marker had been applied correctly.

Mr B didn't agree. As an agreement couldn't be reached, the complaint has been passed to me.

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.

Firstly I don't believe it's necessary to address each and every point made in order to meet my statutory duty to determine this complaint. I'm required to do that with minimum formality, and so I'll address the issues that I consider to be the most important. I do stress however that I've considered everything that Mr B and HSBC have said before reaching my decision.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. Some of the information HSBC has provided is information that we considered should be kept confidential.

Firstly, HSBC are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. HSBC decided to review Mr B's account when the credits received into Mr B's account were reported as fraudulent from another bank. I'm satisfied HSBC were entitled to carry out a review based on this information and I'm pleased they asked Mr B for evidence to support their review.

Mr B provided HSBC with what he believes to be sufficient evidence. Mr B explained that he sold a watch which belonged to his family member. The money received into Mr B's account for the watch was received in three separate transactions, and when the buyer changed their mind, the money was taken out, but Mr B was allowed to keep £500 for the inconvenience. He has also since supplied our service with screenshots to show a conversation between him and the buyer of the watch. Mr B has also explained that he received some money from an accident and withdrew money to give to his mother and pay off debts.

It's important banks and building societies complete thorough investigations to ensure they're adhering to their legal and regulatory obligations. In Mr B's case, I agree the evidence he supplied isn't adequate. I say that because Mr B hasn't been able to show a legitimate account of the sale of the watch, or anything between him and his family member to confirm the direction to sell the watch on their behalf. Mr B also hasn't got a copy of the authentication of the watch. Taking all of this into account, alongside the fraud reports HSBC received, I can't fairly agree HSBC should therefore ignore the need for further necessary evidence. So, while I recognise this has left Mr B in a difficult position as he doesn't have the money or the watch, HSBC have a duty to protect and they wouldn't be doing that if they gave the money to Mr B without sufficient evidence. So, I can't say they've done anything wrong.

HSBC decided to end their banking relationship with Mr B by closing his account. And they're entitled to do that under the terms and conditions of the account. I appreciate Mr B feels he is at a loss of around £6,300 but I'm satisfied, based on the evidence I've seen, HSBC took the appropriate action as there isn't any sufficient evidence to show Mr B is entitled to the money in question. I also haven't seen anything which clearly shows Mr B is missing £6,300. I appreciate Mr B has also mentioned a burglary – so if the missing funds are in relation to this, I can't reasonably hold HSBC responsible.

Was the fraud marker applied fairly?

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently. This type of marker will

stay on record for six years and will usually make it difficult for a customer to take out new financial products as Mr B has said he's encountered. In order to file such a marker, HSBC aren't required to prove beyond reasonable doubt that Mr B is guilty of a fraud or financial crime, but they must show that 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 that either there was an attempt to put fraudulent funds into Mr B's account or fraudulent funds have entered Mr B's account and were either moved on or retained. Secondly, the bank will need to have strong evidence to show that Mr B was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

HSBC received fraud reports from a third-party bank relating to the payments which had entered Mr B's account. Therefore, I don't consider it to be in dispute that the funds that entered Mr B's account were fraudulent and he didn't have any legitimate reason to receive these into his account. So, I have carefully considered whether HSBC could conclude he was deliberately dishonest in the receipt and utilisation of these funds and not an unwitting money mule. Having done so, I do think there is enough evidence to suggest that HSBC could reasonably conclude Mr B had been deliberately dishonest. I'll explain why:

- Mr B has told both HSBC and our service that he received money into his account due to the sale of a watch. The money which entered the account came in in separate transactions, and Mr B's version of events say that he had to transfer the money back out to accounts when the buyer changed his mind – however the buyer allowed Mr B to keep £500 worth of funds for his inconvenience.
- Mr B didn't have access to internet banking to be able to transfer the money back out, so says he had to attend a HSBC branch to make the transfer. Mr B said he got burgled on his way to the HSBC branch, and also says he gave the potential buyers around £2,000 in cash from the £12,000 he withdrew himself.
- I haven't seen any evidence of the burglary on the way to the HSBC branch, or that Mr B handed over £2,000 cash. I appreciate Mr B's comments on this but I find his story contradictory in parts.
- While Mr B has since been able to provide screenshots of a conversation between him and the seller of the watch, I don't find this evidence explains the full circumstances of what happened – or explains why the money received into Mr B's account was then reported as fraudulent.
- Mr B has explained that the watch he sold belonged to one of his family members who had owned it for around 17 years. I haven't seen any evidence of the watch itself, or original purchase or authentication receipts which I would expect for a watch of such high value.
- Mr B said he was willing to keep £500 of the money when the buyer wanted the money returned – I haven't seen anything to show Mr B questioned why the money came from different accounts and needed to be returned elsewhere. I also don't think it's reasonable to keep £500 from a complete stranger to the non-purchase of an item. I appreciate Mr B says this offer was to recognise the inconvenience caused, but I don't find it plausible that Mr B thought this was legitimate.

In summary, I'm satisfied that Mr B's account was used to receive and pass on fraudulent funds. Based on all of the available evidence and arguments, I'm more persuaded that Mr B was an active participant in what happened as I haven't seen enough evidence to satisfy me that the sale of the watch legitimately took place, and no reasonable explanation as to why the money was to be returned to different accounts or why Mr B was willing to keep £500. So, I think it was fair for HSBC to register the appropriate fraud marker.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 April 2023.

Hayley West
Ombudsman