

## The complaint

Mrs U complains that HSBC UK Bank Plc registered a marker about her at CIFAS, the national fraud database, when it closed her account.

## What happened

HSBC said it had received a report that £3,000 paid into Mrs U's account on 9 August 2021 had been obtained fraudulently. It said that it had then retained £2,400.80 of the funds as some had been spent. It didn't accept Mrs U's account that this was part of £5,000 sent by her husband from abroad.

Our investigator didn't recommend that the complaint be upheld. He said that HSBC had shown that the business that sent the money to Mrs U was a charity. And there were concerns about why Mrs U's husband wouldn't have sent legitimate money to her directly. The messages Mrs U had provided with her husband didn't show that he was going to send the money by a third party. And although she'd provided a statement showing he'd withdrawn money from his account abroad on 9 August 2021 this didn't seem to equate to a sufficient amount and nor could Mrs U show that he intended to send these funds to her. Our investigator said that the receipt of exchange provided was handwritten and could have been produced at any time. So, he didn't think HSBC had made a mistake in closing her account and adding the marker.

Mrs U didn't agree and wanted her complaint to be reviewed. She said that *"...the means of exchange and transfer is relative to rates/preferences of the service provider/customer and from my understanding, there is also the element of variation in mode of transactions in different settings, open market sources are widely preferred for their comparative advantage. One's choice then depends on the service provider being able to do as expected."* She explained that she had a number of bank accounts so she can distinguish between them for example her salary, savings and other transactions. She said that the rate of exchange at the time of the transaction was the going rate. Mrs U explained she had a professional job and wouldn't want to jeopardise this by acting fraudulently.

## 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. The evidence must be clear, relevant and rigorous.

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.

I've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mrs U was deliberately complicit in what happened include whether she knew or ought to have known that the money wasn't legitimate, whether she may have benefitted from the money by keeping part and whether she has provided generic or inconsistent explanations.

I note that Mrs U has maintained a consistent version of events. And that she wanted the money that had been taken from her account to be returned to her. I'm satisfied that the money paid to her was fraudulently obtained. And that there is no evidence to support that this specific payment originated from the country abroad she says her husband sent it from. The name of that sender and which appeared on her bank statement isn't a business that is involved in international payments and HSBC has shown is a charity. I note that Mrs U hadn't used this account for any significant payments before. She didn't start to access any of the money until November 2021 just before it was reported as having been fraudulently obtained. I note what she says about some of those payments that were made to official bodies and the evidence she's provided about her employment.

Mrs U has provided some evidence from her husband, but which doesn't show the money being sent. There was no reason for this to go through the third party involved I can see and why both Mrs U and her husband would think this legitimate. The handwritten document she says related to the exchange was dated for the same day that the money she says rapidly reached her account from abroad. The exchange rate appears to be favourable compared to what I understand to be market rates at that time. And I don't see how she would think that money from an unknown third party seemingly unrelated to any transfer had come from her husband. To find otherwise I'd need to think that her husband was somehow scammed abroad, his genuine money taken and then his transfer funded by an unrelated third-party business. I'm afraid that on the evidence available I'm not persuaded this is the case. I find Mrs U's explanation of what happened and why money was sent in this way and which I quoted above to be unconvincing and not supported by evidence. So, on balance I consider that it is most likely that Mrs U was complicit in what happened and reasonably knew she wasn't entitled to this money.

HSBC says that it applied the CIFAS marker because Mrs U received fraudulent funds into her account. So, I've looked at whether HSBC 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. 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 Mrs U'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:

- Mrs U received fraudulent funds into her account and didn't report this to HSBC at the time.
- She authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- HSBC had grounds to believe that Mrs U had used fraudulently obtained funds based on the evidence it had.

In light of this I don't consider it acted unfairly in closing her account. I appreciate that Mrs U will be very disappointed when I say that I won't be requiring HSBC to do anything further.

**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 Mrs U to accept or reject my decision before 15 May 2023.

Michael Crewe  
**Ombudsman**