

The complaint

Miss R complains that HSBC UK Bank Plc closed her account and recorded a marker against her with the fraud prevention agency CIFAS. She'd like the marker removed.

What happened

Miss R has appointed representatives for this complaint, but for ease of reading I'll solely refer to Miss R.

In May 2021 Miss R's HSBC account received a payment for £10,000. Over the next week Miss R sent three transactions totalling £6,000 out by money transfer service. There was a further deposit of £3,000 in cash, and then Miss R sent a payment of £10,000 through another money transfer service.

HSBC received a fraud report about the payment into her account. They restricted access to the account and asked Miss R to explain the payment. She told them it was a loan for the purchase of a car. Later she said that the funds were repayment for a loan she'd given to her cousin, but they had sent it through a third party to avoid bank fees. HSBC asked for further information but didn't receive a response. In August 2021 they took the decision to close Miss R's account. They also recorded a marker against Miss R with the fraud prevention agency CIFAS.

Miss R complained to HSBC. The bank responded to say that they had closed her account in line with the terms of her account. They considered further evidence from Miss C about the payments but were satisfied with their decision to record the marker with CIFAS.

Unhappy with this answer Miss R referred the complaint to our service. She explained that she realised she'd been manipulated by her cousin, and she didn't personally know the sender of the money. She'd been at a low point in her life and had lost out on the money she'd passed on.

Our investigator considered this but didn't think HSBC needed to do anything further. They said Miss R's story hadn't been consistent, and there was no evidence of a loan agreement with her cousin, or instructions to pass on the money. They explained that HSBC were within their rights to close the account, in line with the terms and conditions. They said the bar for recording a CIFAS marker was high, and the evidence needed to go beyond mere suspicion. But as Miss R hadn't been able to evidence her entitlement to the received payment, they felt HBC had enough evidence to record the marker.

Miss R disagreed. She accepted that HSBC had a right to close her account but didn't feel the CIFAS marker was fair. She said she was the victim of fraud.

As no agreement could be reached, the complaint has 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.

I've noted that Miss R has requested a phone call before I issue my decision. But having reviewed the file, I'm satisfied that I have enough evidence to reach a conclusion without doing so.

Miss R has also told us that she respects HSBC's decision to close her account. For clarity's sake I've considered whether the way HSBC closed her account was reasonable. Overall, I'm satisfied that it was. Miss R received funds that were later disputed. And it's not disputed Miss R paid this money away. It's reasonable in the circumstances for HSBC to block the account and carry out a review. This is in line with legal and regulatory obligations, and the terms of Miss R's account. Based on the information provided at the time I'm satisfied it was also reasonable for HSBC to close her account in August. This is also in line with the terms of the account. So, I don't see HSBC have been unreasonable here.

The investigator has already outlined the tests that apply in the bank want to record a marker with CIFAS, so I don't see the benefit in repeating them in full here. The key consideration here is whether HSBC have enough evidence to demonstrate Miss R has been complicit in fraud or financial crime. The evidence needs to be clear and rigorous and go beyond mere suspicion or concern.

Miss R hasn't provided a consistent explanation for the deposit of the funds in her account. She initially told the bank it was a loan, before changing her story to say it was a repayment of a loan from her cousin. She's said she initially panicked when asked about it by the bank. But if she had a legitimate reason to expect she was entitled to these funds; it isn't clear why she would panic after being asked about them, or why she would tell them something that wasn't true.

HSBC, and our service, have asked for further information about the loan from Miss R. But nothing has been provided to show either the agreement with her cousin to repay the funds into her account, or why the money was subsequently moved on by money transfer. She has said she lost all the data on her phone in April 2022, so isn't able to provide this evidence now. But I can see HSBC asked her for any further information about this payment in June 2021, August 2021 and as part of their response to the complaint in December 2021. This are reasonable enquiries to establish what happened, and the opportunity for Miss R to demonstrate her side of the story.

Considering the information is now wiped, it seems very unlikely any new or relevant information will become available now.

I've considered what Miss R has said about being manipulated in to making the transactions, and I'm very sorry to hear of the impact of the marker upon her. But the crux of the matter is that Miss R's account received fraudulent funds, she moved them on herself, and then tried to mislead the bank in why she did so. She hasn't been able to provide evidence to support her later claim that this was repayment of a loan. On that basis, I'm satisfied that HSBC have enough evidence to record a marker with CIFAS, and I can't reasonably ask them to remove it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 18 August 2023.

Thom Bennett
Ombudsman