

## **The complaint**

Miss J is unhappy that HSBC UK Bank Plc placed an adverse fraud marker against her name.

## **What happened**

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Miss J held an account with HSBC. In November 2019, two payments were made to Miss J's account. The first payment of £950 was successfully paid to the account, but a further payment of £550 that was made was reversed and therefore not received.

Following the payments made, HSBC received a report from a third-party bank that they had been made as a result of fraud and its customer had incurred a loss.

HSBC asked Miss J to contact it to explain the payments made. In December 2019, Miss J attended a branch and explained that the transactions were made to her account as a result of the sale of two phones via social media to the same person. She told HSBC that she'd posted the phones to the buyer, but then provided a refund as they were posted back.

HSBC carried out a review and decided to close Miss J's account and load an adverse fraud marker against her on the Cifas database.

Unhappy with HSBC's decision to load a Cifas marker, Miss J made a complaint. HSBC carried out a review of Miss J's concerns but concluded it had closed the account and loaded the fraud marker correctly.

Miss J remained unhappy with HSBC's handling of her complaint, so she brought it to our service for an independent review. When approaching our service, Miss J changed her testimony in relation to why the money had been received into her account. She told our service that she was approached on a social media platform and coaxed into believing she could make money from the sale of phones. Miss J says she agreed but was young at the time and didn't realise what she'd gotten herself into. Her account was eventually taken over by a third-party and this is the person who received the funds and paid them back out of the account.

An Investigator considered the evidence and testimony provided by both parties but concluded HSBC had made no error. In summary, they found that HSBC were fair in loading the marker as there were inconsistencies in Miss J's testimony. They also felt Miss J ought to have known the requests she was asked to fulfil were illegitimate.

Miss J disagreed, as she felt she'd been groomed by the third-party and was young at the time.

As Miss J disagreed with the Investigator's findings, the matter has now been passed to me for a final decision to be made.

## 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.

One of the relevant considerations here is set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous such that the member [HSBC] could confidently report the conduct of the subject [Miss J] to the Police.

My interpretation of these standards is that a member cannot simply load a marker against an individual based on mere suspicion. It must be able to meet a higher bar; in that a customer was likely a witting participant in the alleged conduct. This has been reinforced by Cifas' Money Mule Guidance, which it released to its members in March 2020.

In the circumstances of this complaint, I'm satisfied that HSBC has been able to demonstrate the first of the two standards above. It's shown that it received a report from a third-party bank informing it that funds received by Miss J's account derived from fraud. It therefore follows that HSBC had reasonable grounds to believe a fraud or financial crime had been committed.

I've also carefully considered if HSBC has been able to demonstrate it met the second of the above two standards. Having done so, I'm satisfied that it has. I'll explain why.

After the report of fraudulent funds being transferred into the account were received, HSBC contacted Miss J and gave her an opportunity to explain the activity on her account. This was done in line with the guidance set out by Cifas before the marker was loaded against Miss J's name. And I find HSBC's actions to be reasonable and proportionate to the risk it was presented with.

Miss J wasn't truthful with HSBC when it asked her what the payments were for. She instead gave a falsified story that she'd received the money from the sale of goods and had transferred the money out of her account as a refund to the buyer of those goods.

Miss J has said this was due to the fact that she'd been coaxed by a third-party who had taken advantage of, and defrauded, her. Miss J has provided some evidence to support this testimony. She's provided our service with a witness statement she'd given to the Police in January of 2020, which supports the assertion she met a third-party on a social media platform and was instructed to carry out tasks in order to obtain a free mobile phone. However, it doesn't explain how the third-party managed to carry out transfers on Miss J's account without her permission.

Miss J has since told our service that the third-party took her bank card and had full control over her account as a result. This represents another change in Miss J's testimony to both HSBC and the Police that took her witness statement. And while the third-party may have taken Miss J's bank card, it doesn't explain how they managed to access her online banking to perform the transfers out of her account.

Furthermore, Miss J told us that her HSBC account was her only bank account. She also

told our service, and the Police, that a £600 transaction was taken from her card as part of the fraud. But this isn't reflected on her bank statements at the time.

Lastly, I've noted from the statement provided to the Police that when Miss J contacted the third-party via the online social media platform, she said their username was displayed as "\*\*\*\*fraud" (I've redacted the name to avoid any identification). I think Miss J ought to have known what she was involving herself in when seeing a username bearing the word "fraud" in it.

I am in no doubt that HSBC was fair to load the Cifas marker at the time it did. It had received a fraud report regarding transactions into the account, and Miss J had been dishonest regarding the purpose of those payments. So I don't find it made an error here.

I've also considered if, based on information now available, HSBC is fair to retain the marker held against Miss J on the Cifas database. Considering the conflicting testimony and evidence, and the fact that Miss J was conversing with an individual using the term "fraud" in their username, I find HSBC is fair in retaining the marker.

While I find it more likely than not that Miss J was pulled into an elaborate fraud by the third-party, I'm persuaded that she likely knew her involvement in this wasn't entirely legitimate from the outset. I also find it more likely that not that she authorised the transactions out of her account following the receipt of fraudulent funds. That may have been through making the payments herself or handing over access to her online banking to the third-party.

I know this will likely come as a disappointment to Miss J, and I want to assure her that I'm not accusing her of any wrongdoing here; that is not my role. I'm merely commenting on the facts of the case and making a judgement as to whether HSBC has loaded the fraud marker fairly. Considering all that I've said above, I find that it has.

### **My final decision**

For the reasons I've given above, I'd uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 18 April 2024.

Stephen Westlake  
**Ombudsman**