

The complaint

Mr O complains that HSBC UK Bank Plc (HSBC) unfairly lodged a marker against him with CIFAS – a fraud prevention organisation.

What happened

Mr O explained that a friend (I'll refer to him as Mr G) had asked him to sell some foreign currency held by Mr O in exchange for GB Sterling payments. At the time, Mr O has said he held some currency and agreed a rate (informally) with Mr G.

It was arranged that Mr G's brother would make the balancing payment into Mr O's HSBC account and two currency transactions took place in July and August 2021.

In September 2021, the account holder (said to be Mr G's brother) who'd paid those funds to Mr O, reported that his account had been used for fraud and referred to the July payment made from his account to Mr O.

HSBC received that report and asked Mr O to provide evidence that he was entitled to those funds. Eventually, Mr O explained that the funds were his and sent one screenshot with a handwritten note on it as his evidence.

HSBC considered the information and didn't think this explained the payment and decided to close his account and lodged a marker with CIFAS against Mr O.

Sometime later Mr O realised he had an issue with obtaining financial products and found that there was a CIFAS marker in his name.

Mr O complained to HSBC and provided some further evidence which HSBC didn't think was sufficient for them to remove the marker. They declined his complaint so Mr O then brought it to the Financial Ombudsman Service for an independent review.

Mr O was asked to send in evidence of his entitlement to the money and provided details from Mr G and copies of currency transactions and the corresponding GB Sterling payments, again explaining that he was innocent of any wrongdoing. Mr O confirmed that he didn't know the account holder personally and was relying on Mr G's honesty when he said it was his brother's account.

HSBC provided details of the account and their enquiries. Other banks had been contacted regarding certain payments received into Mr O's account and it was confirmed there were no other reports of fraudulent activity recorded about Mr O.

An investigator was assigned to the complaint and assessed the evidence provided by Mr O. He thought the latest evidence meant that HSBC hadn't met the required standards laid down by CIFAS and recommended that the marker be removed.

HSBC disagreed and cast doubt on the evidence provided by Mr O.

As no agreement could be reached, the complaint has now been passed to me for a

decision.

As part of my own investigation, I wanted to understand more detail about the arrangement between Mr O and Mr G, including a second payment from Mr G's (brothers?) account that wasn't reported as fraudulent.

Mr G provided further details about the second payment which again related to an exchange of currency. Mr O was unable to speak directly with the account holder to obtain their support in removing the marker.

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.

The standards HSBC are required to meet before they lodge a CIFAS marker are set at a high bar because the potential impact on someone's finances can be considerable.

There are a number of "pillars" that need to be met with appropriate standards of proof and for this complaint there are two main ones, namely:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.
- That the evidence must be clear, relevant and rigorous.

Once HSBC received a fraud report from the sending bank this gave them reasonable grounds to suspect that fraud or financial crime had taken place, so I think it's fair to conclude they'd met the requirements of the first pillar.

When HSBC asked Mr O for proof of his entitlement to those funds, they only received a minimal response that they didn't consider sufficient to explain the circumstances. I agree that at the time, they met the standards laid down and it was appropriate for them to lodge the marker. Mr O's evidence lacked any detail or explanation that supported his case.

But, once Mr O had complained and provided further detail, I think balance of the situation has swung to Mr O's favour. I say that because:

- There were no other reports of fraud despite numerous transfers from other individuals into his account.
- There was no report of fraud for the second payment he received from the same account.
- No funds were returned to the sending account despite available credit.
- Mr O provided testimony and screenshots of foreign currency movements that matched the incoming payments into his account.
- Mr G wrote to Mr O and confirmed his version of events.

When looking at the evidence I noted that HSBC maintained that it was questionable, and the movement of funds had taken several steps before landing in his account. I understand why they've said that, but they've not supplied any evidence to cast doubt on the source of that evidence, so I haven't given this much weight.

But I do understand their reluctance based on the various transactions involved. It's apparent to me that Mr O was providing an informal service to members of his community and in doing so ran a risk of breaching the account terms to which he'd signed up for. The

pattern of payments in and out of his account do give rise to some questions and regarding the closure of his account, I'm satisfied that HSBC's decision here was both fair and reasonable.

Overall I'm satisfied there's now sufficient evidence to support Mr O's entitlement to those funds and support his version of events. So, it's both fair and reasonable for the marker to now be removed.

My final decision

My final decision is that I uphold this complaint and HSBC UK Bank Plc are now required to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 28 August 2024.

David Perry
Ombudsman