

## **The complaint**

Mr R complains HSBC UK Bank Plc (“HSBC”) applied an adverse fraud marker against him. To put things right, Mr R wants the marker removed.

## **What happened**

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

On 28 April 2021, Mr R received an amount over £7,000 into his HSBC account. The same day the funds were paid out in two separate amounts to a crypto currency platform. Following a review, HSBC blocked Mr R’s account.

As his debit card wasn’t working Mr R called HSBC where he was asked about the funds into his account. This call took place on 30 April 2021. Mr R said he was expecting the funds and they related to a gift from a family member. Mr R was asked if he had any evidence of this like chats, and he said he didn’t.

Later in 2021, HSBC decided to close Mr R’s account with immediate effect. Mr R later discovered that HSBC had applied a CIFAS (Credit Industry Fraud Avoidance System) ‘misuse of facility’ marker against him.

Mr R complained to HSBC, and his complaint wasn’t upheld. Mr R referred his complaint to this service. He explained that he was the victim of a scam in April 2021 as someone had put money into his account and he had to transfer it out. Mr R says he was naive to have done this and should have explained things better to HSBC at the time. Mr R explained that he had made a friend on a social media site for several months, and he was persuaded to move their money in this way.

One of our Investigator’s looked into Mr R’s complaint, and they recommended it wasn’t upheld. In short, they felt Mr R’s testimony was inconsistent and HSBC met the standard of evidence to have applied the marker in the way it did.

In his response Mr R said he just wants to get on with his life and put this matter behind him. So he asked for his complaint to be looked at again by an ombudsman. This complaint has now 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.

Having done so, I have decided to not uphold this complaint. I’ll explain why.

HSBC say the marker it filed with CIFAS is intended to record there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, HSBC is not required to prove beyond reasonable doubt Mr R is guilty of a fraud or

financial crime, but it must show there are grounds for more than mere suspicion or concern.

CIFAS says:

- hat 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

What this means in practice is that a financial business must first be able to show fraudulent funds have entered Mr R's account, whether they are retained or pass through the account. Having looked at the information HSBC has given me, I'm satisfied fraudulent funds entered Mr R's account.

Secondly, HSBC will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether HSBC has enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

HSBC has provided me with the call recordings for when it spoke to Mr R at the time his account was blocked. Mr R was asked who the money came from, and he said it was a gift from a family member. This is discrepant with what he now says – that is he was scammed by someone he befriended on social media over many months.

I note Mr R says he was naive and embarrassed at the time, and he just wanted to forget about it and move on. But given his account was blocked pending a review in April 2021, I question why he didn't explain things accurately at the time.

Mr R was also asked on the 30 April 2021 call if he had any records of the chats with his family member and he said no. I think its likely if Mr R had in fact agreed with this social media scammer to help them out, he would have had some evidence on his phone to resolve HSBC's query and remove the block on his account at that time.

When complaining about the CIFAS marker in July 2024, Mr R tells HSBC on a call recording that he himself was scammed out of a couple of thousand pounds. But only a few hundred pounds more that he had received was moved to the crypto platform. This also discredits Mr R's more recent account of what really happened and that he was a victim of fraud.

Mr R says he didn't know he was sending the fraudulent funds to a well-known crypto platform. But I find this implausible given a smaller payment of £5 was sent to the same platform with the same reference a few days before.

So after carefully weighing everything up, and as there isn't any compelling evidence to show Mr R wasn't witting, I'm satisfied the CIFAS marker has been applied fairly. I'm satisfied that in applying the marker, HSBC met the standard of evidence required to do so. That means I won't be asking HSBC to remove the marker.

### **My final decision**

For the reasons above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2024.

Ketan Nagla  
**Ombudsman**