

The complaint

Mr D complains that HSBC UK Bank Plc unfairly registered a marker about him at Cifas, the national fraud database.

What happened

Mr D had an account with HSBC.

Between 28 and 29 October 2023, 11 payments totalling more than £4,000 from four individuals, I will refer to as B, C, D, and E were paid into Mr D's account. The references for each of the payments was 'rent'.

Mr D then spent some of the money and transferred funds out of his account to other accounts he held with different banks and to another individual I will refer to as J. Mr D says that J was guiding him about what to do with the money.'

HSBC were notified by another bank that the payments Mr D had received from B, C, D and E were fraudulent.

HSBC asked Mr D to visit a branch so that it could ask him questions about his entitlement to the funds. Mr D attended a branch and told HSBC that some of the payments were from selling clothes and that he didn't know where the funds had come from. Mr D sent HSBC copies of screenshots he said were between him and another person who had bought clothing from him.

Following this HSBC decided to place a fraud marker against Mr D's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds.

Mr D discovered the marker when he completed a subject access request with Cifas. Mr D complained to HSBC and said that the marker was preventing him from opening other accounts. So, he asked HSBC to remove the marker.

In response HSBC asked him to explain the payments from B, C D and E. And to provide evidence of his entitlement to the funds. Mr D, said a friend of a friend had asked him to use his account to receive money in return for some compensation. Mr D said he didn't realise that the funds were fraudulent, and he'd been naïve.

HSBC reviewed everything including what Mr D had told them. After doing so, it said it wasn't willing to remove the marker.

Unhappy with this response Mr D brought his complaint to our service. He wants HSBC to remove the marker. He said the marker has led to the closure of bank accounts he had. And that it was impacting his ability to take out credit and open other accounts. He maintained that he hadn't done anything wrong and wasn't a fraudster. He said that he'd lied to HSBC about the money when the bank had asked him, and that he'd only allowed his friend to use his account as a favour.

An investigator looked into Mr D's complaint and asked HSBC and Mr D for some more information about what had happened. In summary, Mr D told the investigator:

- He's been naïve and regretted allowing his account to be used by his friend.
- He only did what his friend told him to do. And it was his friend idea to lie to HSBC about the payments being made for reselling clothing.
- He can't provide any evidence of his discussions with his friend about the arrangement.
- He doesn't have access to his bank statements to show where he'd sent the money so couldn't provide much information.

After reviewing everything the investigator said that HSBC hadn't done anything wrong when it had recorded the marker against Mr D's name. So, they didn't uphold the complaint. HSBC agreed with what the investigator said. Mr D didn't. He wants the marker removed and said that is impacting his credit file and ability to open a bank account. Mr D said he was young and naïve.

As no agreement could be reached the matter has come 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.

The marker that HSBC filed with Cifas against Mr D is intended to record that there's been a 'misuse of facility' – relating to using his account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr D is guilty of a fraud of financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas says:

- *"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous.*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr D's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was *deliberately* dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate* complicity. There's also a requirement that HSBC should be giving the account holder an opportunity to explain what was going on.

Here Mr D received funds into his account that were confirmed by other third-party banks to have originated from fraud. The banks reported that their customers had fallen victim to scams.

HSBC told Mr D that they had concerns about the money that had been paid into his account by B, C, D, and E. HSBC asked Mr D to send them evidence of where the funds had come from and proof that the money belonged to him. In response Mr D told HSBC the funds were payments for reselling clothes.

So, I need to consider whether based on all the information including the evidence Mr D has submitted to us, whether HSBC had sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I'm satisfied they did, and I say this because:

- I've seen the evidence from HSBC that confirms they were notified by other bank that the money Mr D received from B, C, D and E, originated from fraud.
- Having balanced all the information I find that Mr D allowed his account to be used to receive this money. So, he was a witting participant. This finding means that he didn't necessarily have to know about how the fraudulent credit was obtained but that he allowed his account to be used for purposes he couldn't reasonably think were legitimate.
- Mr D received fraudulent funds into his account and didn't report this to HSBC
- at the time. When HSBC questioned him about the funds he deliberately lied.
- I've looked at the screenshots Mr D has sent to the investigator of some of the conversations he had with J. I agree that these do show that someone is guiding Mr D in what he should tell the bank. However, I can't reasonably conclude that, at the time Mr D was being being told to deliberately misled the bank, that Mr D could have still believed what he was being asked to do wasn't legitimate. I think its more likely than not that Mr D knew the money coming into his account was fraudulent.
- Mr D allowed the use of his account in this way and so was in control of who had the benefit of this money.
- I can see that after when Mr D received the payments from B, C, D and E, the funds were immediately transferred to other accounts in Mr D's name and some of the money was spent. This activity suggests to me that Mr D was potentially involved in money laundering. And benefitted from the money he received from B, C, D, and E.
- I've considered what Mr D says about the impact the marker has had on him. But he hasn't described being placed under any duress or being especially vulnerable. In my view, based on all the evidence, I think it's most likely he allowed his HSBC account to be used for receiving fraudulent funds. And I think he was a willing participant in this and in moving the money on and spending it. And that he reasonably knew this wasn't a legitimate activity. So, I'm not convinced Mr D is an innocent party. I think the evidence shows that Mr D was involved in a misuse of facility.

In summary, the requirements around banks lodging markers at Cifas include there being sufficient evidence that the customer was aware and involved in what was going on. Mr D has received funds into his account that have originated from fraud. He has been unable to provide any corroborative evidence to support his testimony that he is an innocent party of the transfer of the funds and was unaware of their origins. I also find that the suspicious circumstances of the movement/use of the money and explanations provided by Mr D about what he did with Mr D's money adds weight to this argument.

Having looked at all the evidence I'm satisfied this shows there were reasonable grounds to suspect that fraud had been committed. And from evidence I've seen that Mr D was likely complicit in this. So, on this basis I didn't think it would be fair or reasonable to ask HSBC to remove the marker or pay Mr D compensation.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 April 2025.

Sharon Kerrison
Ombudsman