

The complaint

Mr M complains that HSBC UK Bank Plc (HSBC) unfairly loaded a marker about him at Cifas, the national fraud database. He's also unhappy that HSBC closed his account.

What happened

Mr M had an account with HSBC.

In June 2023, a payment of £1,100, was paid into Mr M's account. Following this most of the money was withdrawn by Mr M. And just over £150 was transferred to another account with a different bank.

Following this HSBC were notified by another bank that the £1,100 Mr M had received was fraudulent and that their customer had been the victim of a scam.

HSBC decided to block Mr M's account and asked Mr M to get in touch so that it could speak to him about the payment. HSBC called Mr M, sent him a text and wrote to him on 8, 13 and 26 June 2023. But Mr M didn't respond.

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

Mr M discovered the marker when he had trouble with another bank account he had being closed. He complained to HSBC and asked them to remove the marker. HSBC reviewed everything including what Mr M had told them. After doing so, it said it wasn't willing to remove the marker.

Unhappy with this response Mr M 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 receive his student finance. He explained his mental health has suffered because of the stress and worry about the impact of the marker on him.

Mr M says he was tricked by a friend and his flat mate to participate in a marketing scheme to make money. Mr M says he followed instructions given to him and was surprised to receive the £1,100 into his account, which he was then pressured to withdraw and hand over to the people who'd tricked him. He said he'd been naïve and hadn't realised what was going on. And said he never received any of the letters HSBC sent to him as he was away at university.

An investigator looked into Mr M's complaint. After reviewing everything the investigator said that HSBC hadn't done anything wrong when it had recorded the marker against Mr M's name. And closed his account. So, they didn't uphold the complaint. HSBC agreed with what the investigator said. Mr M didn't. He wants the marker removed. In summary he said:

- He was taken advantage of when he received the £1,100 and withdrew it / transferred it due to this lack of experience at the time and is a victim of a scam.
- He cannot provide any supporting evidence of his interactions with the third parties who took advantage of him.
- He has provided a copy of his Metro Bank statement which indicates he paid £65 to a Ms A on 25 May 2023. He was told to make this payment by way of an entry fee for the multi-level marketing opportunity. He was also told he would receive documents once the fee was paid. He cannot provide evidence of this conversation either.
- He didn't benefit from the £1,100 payment he received.
- He's been unable to open a bank account to receive his student income, meaning his parents have had to pay for his university costs instead in cash, which has led them to travel to him for two hours each time. And because he's been unable to focus on his studies, he had to repeat his second year of university. This means he's out of pocket due to increased costs for his tuition and accommodation. He's also unable to work part time and has suffered a psychological impact.
- Mr M also provided four separate character references from people within his community, and his mother which indicate Mr M is a well thought of and intelligent person.

The investigator reviewed all the information Mr M provided but maintained that HSBC hadn't done anything wrong. Mr M remained unhappy and asked for an ombudsman's decision. So, 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 M 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 M is guilty of a fraud or 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 M'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 M received funds into his account that were confirmed by a third -party bank to have originated from fraud. The bank reported that their customer had fallen victim to a scam.

In June 2023, HSBC asked Mr M to send them evidence of where the £1,100 had come from and proof that the money belonged to him. But Mr M didn't get in touch with HSBC.

Mr M told this service that he'd been tricked by people he knew into participating in a marketing scheme to earn extra money. He said he hadn't benefitted from the fraudulent funds and had been pressured to withdraw the money at shop and handed it over to the people who'd tricked him. He said he'd been the victim of a scam and had lost money. Mr M said he couldn't provide any evidence of his interactions with the people who'd tricked him as these all took place on a social messaging platform and the messages no longer existed. But he said he had reported the matter to Action Fraud and had tried to report the matter to the police, but they weren't interested in investigating the matter.

So, I need to consider whether based on all the information including the evidence Mr M 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 another bank that fraudulent funds were paid into Mr M's account.
- When HSBC asked Mr M about the payments at the time. He didn't respond. Mr M has said he didn't receive any phone calls, texts or letters from HSBC. He's said this was due to him being away at university. I find it odd that all attempts by various mediums failed to get a response from Mr M – especially when HSBC decided to close his bank account. It appears Mr M only got in touch with HSBC when he discovered the Cifas marker.
- After bringing his complaint to our service, Mr M provided an explanation about the activity on his account. Mr M said she had no idea the money was fraudulent; he was tricked and pressure to hand over the money in cash and transfer some to another bank account.
- But Mr M hasn't provided any evidence about his arrangement with the individual she says tricked him which would support his explanation, such as any messages between him and them prior to him receiving the funds. Such as why Mr M was receiving the funds, or what he expected in return, including why he sent money to Ms A. I find the fact there is no evidence at all just isn't credible. I'd expect there to be some evidence that led up to this arrangement which Mr M could provide. But nothing has been provided. So, I'm not persuaded Mr M is a victim of a scam as he's suggested.
- If Mr M believed he'd been tricked and forced into withdrawing the fraudulent money, I'd expect him to have alerted HSBC at the time. But he didn't do so. The fact that he didn't do so makes me think it's more likely than not that Mr M knew the money coming into his account was fraudulent.
- Mr M allowed the use of his account in this way and so was in control of who had the benefit of this money. After Mr M received the payment, the funds were immediately transferred to another account and withdrawn in cash. This activity suggests to me that Mr M was potentially involved in money laundering.
- I've considered what Mr M 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. I say this because when HSBC first asked about the activity on his account, when he would have had every reason to come clean if he was an unwitting participant, he didn't get in touch with the bank. As far as I can see, the evidence strongly supports that Mr M was knowingly involved in fraud,

whether directly, or as a money mule. So, I'm not convinced Mr M is an innocent party. I think the evidence shows that Mr M was involved in a misuse of facility.

HSBC decided to close Mr M's account. HSBC have relied on the terms and conditions of Mr M's account in closing the account. These outline that HSBC can close a customer's account with two months' notice, and in certain circumstances they can close an account immediately. In this case, HSBC closed Mr M's account immediately.

For HSBC to act fairly here they needed to meet the criteria to apply their terms for immediate closure – and having looked at these terms and all the evidence I'm satisfied that HSBC did. I say this because Mr M's account was being used to receive and spend funds that had originated from fraud. So, it was entitled to close the account as it's already done and end its relationship with Mr M. This means I won't be asking HSBC to reopen Mr M's account.

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 M has received funds into his account that have originated from fraud. I also find that the suspicious circumstances of the movement/use of the money and explanations provided by Mr M about what he did with the fraudulent 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 M was likely complicit in this. On this basis I didn't think it would be fair or reasonable to ask HSBC to remove the marker or pay Mr M 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 M to accept or reject my decision before 31 July 2025.

Sharon Kerrison
Ombudsman