

complaint

Mr Q complains that HSBC UK Bank plc incorrectly recorded adverse information against his name with one of the UK's fraud alert services and this has caused him a number of difficulties.

background

Mr Q says that he applied for an account online in 2017. A few weeks later a cheque for just under £10,000 was paid into his account. HSBC says that it noticed that the cheque was fraudulent so didn't process it and blocked Mr Q's account.

Five days later Mr Q told HSBC that he had lost his card. He wasn't sure when it went missing. He says HSBC then told him that it had blocked his account because his card had been used to pay in the cheque. Mr Q denies that he paid in the cheque.

Mr Q has now found out that HSBC placed a marker against his name with CIFAS, one of the UK's fraud prevention databases. He says this is stopping him from opening another account or getting any finance. He'd like it removed.

Our investigator didn't think this complaint should be upheld. She was satisfied that the cheque was fraudulent and that HSBC had done enough to show that it hadn't made a mistake in recording the adverse marker against Mr Q's name.

Mr Q responded to say, in summary, that he didn't agree that HSBC had enough evidence to show that he had been knowingly involved in the fraud. He didn't know exactly when he lost his card and thinks it's possible it was before someone tried to pay the cheque into his account.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that the cheque that someone attempted to pay into Mr Q's account was fraudulent. But before placing a fraud related marker against Mr Q's name, HSBC needed to have a reasonable belief that criminal charges could be brought against him as a result of the activity. A suspicion or concern isn't enough. So I've looked at whether HSBC was fair to apply the marker, based on the evidence it had and the investigation it carried out, and what the rules say about applying such markers.

Mr Q opened a bank account and an ISA savings account online at the end of July 2017. HSBC sent a debit card for the bank account and a personal identification number (PIN) separately to his registered address. Two weeks later Mr Q set up online banking (OLB) and HSBC sent a secure key to him. Mr Q also used his mobile to make bill payments through telephone banking.

I'm satisfied that Mr Q received his card, his PIN and his secure key. He used the card at an ATM to withdraw cash and then again for some small expenses at local retailers. He also made a transfer from his account to his ISA account through OLB.

Mr Q reported his card as lost five days after it was used to pay in the cheque in question. He says that he doesn't know when it went missing. He thinks it likely that it went missing before 16 August (the date the cheque was paid in) but he didn't report it immediately because the account didn't have very much money in it and he couldn't see anything suspicious happening when he checked the account through OLB. He only reported the card as lost once he was sure he couldn't find it.

On 15 August (the day before the fraudulent activity) Mr Q's card was used to pay £20 in cash into his account through a machine at a HSBC branch some distance away from where Mr Q lived. At the time the cash was paid in there was very little money in Mr Q's account.

If Mr Q had lost his card before 16 August or it was taken by an unknown third party, as he now suspects, then this means the cash was paid in by this third party. If Mr Q didn't do this himself, then I think Mr Q must have known the person who did. I say this because Mr Q used this money the same day to make two payments through telephone banking, using the same mobile phone he used to report the card lost. There's enough evidence to show that Mr Q passed the relevant telephone banking security checks.

On 16 August someone used Mr Q's card to pay the cheque into his account. I understand that Mr Q was originally told that the cheque had been paid in at a location some distance from his home (where the cash was paid in). For the avoidance of doubt, the cheque was paid in at Mr Q's local branch. The paying in slip was made out in the name of Mr Q and the sort code and account number given were for his ISA account and not his bank account.

If the cheque was paid in without Mr Q's knowledge then I think, not only would the unknown third party have been in possession of Mr Q's debit card but they would also have had to have full account details of his ISA as well. This information couldn't have been found from Mr Q's card because it related to his bank account, which had a totally different sort code and account number.

It seems unlikely that an unknown third party would try to pay a cheque into Mr Q's ISA account when they would have no means of accessing the money. The debit card was for Mr Q's bank account. The only way to access the money would have been through OLB, the mobile app or telephone banking.

Mr Q has said that he lived with a number of other people and it's possible that one of them could have intercepted his mail. But I'm satisfied Mr Q received his PIN and secure key. He says that it might have been possible for someone to have found out his OLB details when they were sent to him. Even if Mr Q's OLB information had been compromised in this way, Mr Q still had the secure key, which he hadn't reported as lost or stolen. And Mr Q would have entered his own memorable information when he registered for OLB. I don't think an unknown party could have guessed this.

So I'm not persuaded by Mr Q's argument. Even if someone had taken or found Mr Q's card that there still isn't any plausible explanation of how they would be able to obtain his security details, which included personal information set by Mr Q himself, to allow them to access the ISA account.

Taking everything into account, if Mr Q didn't pay the cheque into his account himself then I think he allowed someone else to do so.

HSBC says that it applied the CIFAS marker because Mr Q received fraudulent funds into his account. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that HSBC needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Based on the evidence it had, and the investigation it carried out, I find that HSBC has met the burden of proof required by CIFAS to add the marker. I appreciate that this will be a great disappointment to Mr Q as the marker is causing him difficulty now and in the future. But given what I've said above, I don't think HSBC has treated him unfairly by recording the CIFAS marker. So I'm not going to ask it to remove it.

I appreciate that Mr Q thinks that CCTV would be helpful to show that he didn't try to pay in the cheque. I understand he is frustrated that the footage isn't available. I don't think CCTV evidence, even if it were available, would help resolve whether the person making these payments was acting with Mr Q's knowledge and authority or not. So I don't think it would have persuaded me to change my decision.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 8 May 2020.

Karen Wharton
ombudsman