

Complaint

Mr A complains HSBC UK Bank Plc unfairly recorded a marker against him on the National Fraud Database operated by Credit Industry Fraud Avoidance system (CIFAs). He also says his accounts were closed unfairly. He wants the marker removed and compensation for the trouble he's been caused.

Background

Mr A held several accounts with HSBC. On 7 November 2017 a cheque was deposited into one of his accounts for £18,940. The cheque was reported as fraudulent, and Mr A's access to the account was removed while HSBC investigated.

On the 8 November 2017 a payment of £537.69 was attempted from Mr A's account. And two days later a further payment of £3001.00 was attempted. Both attempts were made on a money transfer website using Mr A's debit card details, a website Mr A had used numerous times in the past, according to his account history.

Mr A rang HSBC on the 10 November 2017. He said he'd noticed the deposit on his account and wanted to report it. He'd been expecting a deposit of £3000 from a friend, so had checked his account for this reason. He says HSBC didn't ask him any questions or require him to discuss his account further.

HSBC decided to terminate its relationship with Mr A. It issued him a letter on 1 December 2017, informing him his accounts would close immediately. The account in which the cheque funds were deposited closed some time later. There was a debit balance on the account after the cheque funds were removed, so the account closed once the balance was paid off.

In March 2018 HSBC recorded a 'mis-use of facility' marker against Mr A on the National Fraud Database, operated by CIFAs in relation to the cheque.

Mr A complained to HSBC in November 2018 about the marker and the closure of the account. He says he'd lost out on job offers and the marker continues to cause difficulties due to the industry he works in. He insists he had no knowledge of the cheque. He resided in another country than the United Kingdom at the time and couldn't have gone into a branch in the United Kingdom to undertake the deposit.

HSBC say it was correct to register the marker. Mr A had attempted to make payments out his account, so he knew his balance had significantly increased at that those times.

Unhappy with HSBC's response, Mr A brought his complaint to us. An investigator considered the complaint but decided not to uphold it. In summary they found:

- Mr A may have lived in another country when the cheque was deposited, but this didn't establish he had no awareness of it. CCTV footage wouldn't establish he was unaware of the deposit either.
- Mr A's account was in an unarranged overdraft prior to deposit. This indicated whoever attempted the payments probably knew the cheque had been deposited, so they were actively aware of changes to Mr A's balance.

- There was a lack of a persuasive explanation as to why someone would retain Mr A's details to deposit the cheque and try to make payments without his awareness. Doing so would risk Mr A spotting the funds in his account and preventing the money moving on.
- Mr A says he occasionally lost his HSBC card. But the records HSBC provided show the payment attempts were made using the details from his active card at the time, which was still in his possession.
- The attempted payments were made on a money transfer website Mr A had used to make payments previously. This pointed to it being him making the attempts.
- The HSBC advisor Mr A spoke to on the phone told him he needed to go into a branch with photo identification to discuss what had happened on his account. Mr A says he wasn't told this, but this wasn't correct.
- On balance there was enough information and evidence for HSBC to show it had complied with the evidential standard CIFAs requires of its members to register a marker.
- HSBC had correctly followed the terms of Mr A's accounts when it closed them.

Mr A strongly disagreed with the outcome. He repeated he wasn't in the United Kingdom to deposit the cheque, so it couldn't have been him. He was sure he was never asked to go into a branch of HSBC to discuss his account. And he emphasised he is a victim. The investigator reviewed his points, but they didn't alter their findings.

Mr A has asked for a final decision by an ombudsman, so the complaint has been passed to me to decide.

My findings

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've decided not to uphold Mr A's complaint for broadly similar reasons to those given by the investigator. I'll explain why.

CIFAs marker

HSBC is a member of CIFAs, which operates the National Fraud Database. In order to register a marker against one of its customers on the database, HSBC needs to meet the threshold of information and evidence required by CIFAs' guidelines. The guidelines are published on CIFAs' website.

I've considered the guidelines and weighed the information HSBC had, as well as all the wider information available to me. And I find there was a sufficient basis for HSBC to register the marker.

I understand Mr A resided in another country other than the United Kingdom when the cheque was deposited. He's provided ample evidence to establish this. And I haven't ignored what he's said. But the investigator was right to conclude that residing in another country by itself doesn't show he didn't have an awareness of the cheque. It's quite possible someone else deposited the cheque with his consent and knowledge. I'm also satisfied that CCTV footage of someone other than Mr A depositing the cheque wouldn't establish Mr A wasn't expecting the deposit.

Mr A was in an unarranged overdraft prior to the deposit. So, if he was unaware of a substantial increase to his available balance, I doubt he'd have attempted any large payments out of the account. But the attempted payments were to one website; a website Mr A made numerous payments to in the past, including a payment made a day prior to the deposit.

I find it improbable that someone unknown to Mr A, deposited the cheque without his permission and went on to try to pay the same website Mr A used only one day before. Instead, I find it much more likely it was Mr A or someone with his permission who attempted the payments, knowing they were trying to draw from the deposited funds.

Mr A says he rang HSBC to report the deposit. But I must account for the possibility that he rang on discovering his access to the account had been restricted, following the payments out of the account being refused; the purpose being to distance himself from what had happened.

Mr A says he wasn't asked to go to an HSBC branch to discuss his account. But I've listened to the call the investigator referred to, and I find he was told this. The advisor said he needed go into a branch with photographic identification and he could do this in the country he resided. I'm satisfied then that he was aware HSBC wanted to speak to him about the account. And I find him not speaking to them, and his acquiesce regarding the closure of his accounts telling.

I don't have reason to doubt Mr A experienced difficulties getting employment in the way he describes. And this may be related to the CIFAs marker. But I find HSBC met the evidential threshold required by CIFAs, so I won't be directing it to remove the marker or pay compensation to Mr A.

Account Closure

HSBC is entitled to end its relationship with Mr A, in the same way Mr A could've decided he no longer wanted to be its customer. I find it appropriate to interfere with HSBC's discretion in this regard, unless I find the exercise of that discretion was based on improper reasons.

HSBC should, however, apply the correct terms when it closes accounts. Most of Mr A's accounts closed immediately. And from what I can see, the account in which the cheque was deposited remained restricted until the unarranged balance was paid off. I've considered the applicable terms for this kind of situation, and I'm satisfied they were applied correctly.

Indeed, I can understand why HSBC wanted to terminate its relationship with Mr A given the factors I've discussed above.

My final decision

For the reasons I've explained, my decision is to not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 August 2020.

Liam King
Ombudsman