

Complaint

Mr R is unhappy that HSBC UK Bank Plc blocked access to his account and removed the available funds from it. He's also unhappy that a Credit Industry Fraud Avoidance System (CIFAS) marker was recorded against his name.

Background

Mr R has been a HSBC customer since 29 May 2018. He opened a basic bank account on 8 November 2018.

On 20 November 2018, £150,000 was credited to his basic bank account from a third party bank - I'll refer to this bank as 'Bank A'.

The following debit transactions were made out of the account following the credit of £150,000:

25 November 2018	£3,000 (transfer)
26 November 2018	£25,000 (transfer)
26 November 2018	£3,300 (card purchase)
26 November 2018	£479 (card purchase)
26 November 2018	£1,201 (card purchase)
26 November 2018	£826.89 (card purchase)
27 November 2018	£15,000 (transfer)

HSBC reviewed Mr R's account and froze the remaining balance of £116,064.11; this was removed on 30 November 2018.

Mr R spoke with HSBC to provide supporting evidence to show he was entitled to the money in his account.

Unhappy with Mr R's supporting evidence and explanation, HSBC took the decision to close his account which took effect on 4 February 2019. A CIFAS marker was also applied against Mr R's name.

A representative on behalf of Mr R referred this complaint to our office.

An investigator here looked into things and didn't find that HSBC had acted outside of the terms and conditions applicable to Mr R's account.

She noted the bar for recording a CIFAS marker is a high one. And HSBC must have good reason to believe they could have suffered a loss and/or they reasonably believe they have grounds to press criminal charges as a result of the activity on the account. This should be more than just a suspicion or concern.

She further noted that HSBC must have carried out sufficient checks to satisfy this requirement. Given the impact a CIFAS marker can have on an individual, the bank is expected to have a record of these checks so they can evidence the decision they reached to record the CIFAS marker. Our investigator was satisfied HSBC had good reason to record the CIFAS marker.

Mr R's representative disagreed with the outcome and requested an ombudsman review the complaint.

My findings

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

Mr R hasn't disputed his account closure so it's for me to now decide whether HSBC ought to return the funds they removed from his account and remove their adverse report to CIFAS about him.

I'm satisfied that HSBC acted in line with their legal and regulatory obligations when they reviewed and subsequently blocked Mr R's account. The terms and conditions of Mr R's account allows for this.

Having looked at the evidence, I don't find that HSBC failed to act properly to follow their own procedure when they blocked the funds that remained in Mr R's account. So I have no grounds to ask them to return the funds to Mr R and I'll explain why.

CIFAS marker

I'll firstly consider the matter of the CIFAS report. I must have regard for the investigator's correct description of the basis on which HSBC can file a report with CIFAS.

I've considered the information HSBC provided to support their actions. This includes their investigation and notes of their discussions with Bank A. For confidentiality reasons, I'm unable to disclose the content of these specific investigations and notes.

I can see that HSBC spoke to Mr R to give him an opportunity to explain the circumstances surrounding the payment into his account. From looking at the contact notes, I can see that Mr R told HSBC the payment was a loan from an investor, who was also his friend. The notes go on to say the loan was a flexible business loan for 5 years and provided the loan agreement as evidence.

Taken together, Mr R's account contradicts HSBC's understanding of things from Bank A and other sources. So I don't think I can fairly and reasonably say that HSBC didn't have sufficient justification to make a report to the police (and therefore record a CIFAS entry); and I also don't consider that information has subsequently come to light such that I can retrospectively say that HSBC acted incorrectly.

Having looked at the loan agreement myself, it doesn't state anywhere that it was for business purposes. I also don't find the identification documents provided by Mr R about the account holder of Bank A persuasive. That's because this information doesn't evidence Mr R's entitlement to the funds paid into his account, rather it shows that he holds information about the account holder of Bank A.

Returning funds

I'm aware Mr R would like the £116,064.11 removed from his account to be returned to him.

Based on HSBC's concerns, the terms and conditions of Mr R's account allow them to remove the funds in question, without asking his permission. Although, I should note that

HSBC told Mr R they were removing the funds and invited him to submit further evidence. Based on what I've seen, I think HSBC gave Mr R sufficient opportunity to evidence his entitlement to the funds paid into his account and he's not been able to do this to HSBC's satisfaction. I've not seen anything to suggest HSBC acted outside what they're entitled to do, or unreasonably, by removing the available funds in Mr R's account.

To be clear, in making this decision, I'm not seeking to suggest I understand exactly what the position is between Mr R and the person who sent the funds to him. I'm not suggesting that I can be certain at all that Mr R has been involved in any wrong doing. But the decision for me to make was about whether I could say that the bank wasn't entitled to act as it did, with their CIFAS report and removal of the funds from Mr R's account; based on the information available to them. I don't consider HSBC's current position to be unsustainable.

In light of everything, I don't require HSBC to alter or remove the report they made to CIFAS or return any funds to Mr R.

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 R to accept or reject my decision before 25 December 2019.

Dolores Njemanze
ombudsman