

The complaint

Mr S has complained that HSBC UK Bank Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In 2019, Mr S's HSBC account received a series of credits totalling around £5,000, which were then quickly forwarded on via his mobile app or withdrawn in cash using his card and PIN. HSBC later received an official report that these were the proceeds of fraud.

HSBC repeatedly called Mr S to try to talk to him about this, and they sent letters asking him to get in touch. But Mr S did not talk to HSBC. So they closed his account and registered a marker against him at CIFAS.

In 2023, Mr S complained. He now says he'd lost his phone, which was unlocked and had all his security details written in the notes section. It also had his card in the case. He said he never knew about the fraudulent transactions.

Our adjudicator looked into things independently and didn't uphold the complaint. Mr S didn't agree, so the complaint's been passed 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.

In order to register this marker, HSBC were not required to prove beyond all reasonable doubt that Mr S had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I think HSBC did have sufficient grounds to register this marker. I'll explain why.

HSBC received an official report that the money Mr S's account received was the proceeds of fraud. It's a common tactic for fraudsters to recruit young students, like Mr S was at the time, and convince them to hand over access to their account, often in exchange for a cut of the proceeds. This is often called being a "money mule". I need to keep this in mind.

Mr S has shown that when the cash withdrawals took place, he was in class in a different city. So I'm satisfied Mr S wasn't present at those cash withdrawals himself. But as I noted above, it's common in a money mule situation to give someone else access to the account. So Mr S's class attendance does not rule out the possibility that he was acting as a money mule or that he was otherwise involved in the fraud.

Mr S's card was used to make those cash withdrawals. He says he lost his card before the fraud. But he didn't report that to HSBC until four years later. And he knew he was supposed to report lost cards, as he'd reported his previous card as lost a month before. For clarity, the card he reported as lost a month before was not used – it was blocked and replaced when he reported it. It was Mr S's active, up-to-date card which was needed for the withdrawals.

Around £190 of the fraudulent funds was paid to Mr S's own account with another bank. So Mr S directly benefitted from the fraud. And as far as I can see, Mr S did not query or return this credit. If Mr S was an unwitting victim of theft, it's not likely or plausible that the thief would donate some of the proceeds of crime to him. But this activity is consistent with Mr S either being directly involved in the fraud or being recruited as a money mule.

While Mr S now says he lost the phone he used to access his account, I can see that he still had access. In the days after the fraud, he continued to receive regular credits from his parent and pay them onto his account with his other bank as usual. Further, when Mr S was accessing his online banking to make these payments, he would have seen the fraudulent activity. But he didn't tell HSBC anything was wrong at the time. It is very unlikely that Mr S would not report the disputed payments if they were made without his consent – there was thousands of pounds worth of activity on his account.

Similarly, I can see that after receiving the fraud reports, HSBC repeatedly called and wrote to Mr S asking him to get in touch about his account's activity. According to the records, they even got through to him once, but he hung up on them. It would not make sense for Mr S to choose not to speak to his bank if the fraudulent activity was done without his consent. At that point, his account was blocked, he'd been stopped from receiving further credits from his parent or doing his banking, he was getting urgent letters and calls from his bank, he'd supposedly lost his card and phone along with all his security details, and he would've seen the fraudulent activity when he was paying money to his other account. So Mr S would've had a huge cause for concern, and would've been highly motivated to speak to HSBC and find out what was going on. It's simply not plausible that he'd avoid them. But it would make sense for him to avoid discussing the matter if he knew he was taking part in illicit activity.

While the fraud was taking place, someone phoned HSBC twice to discuss the transfers they were making out of Mr S's account. This person was able to pass security and be identified as Mr S. I do appreciate that Mr S's PIN and passwords and so on were on his phone, but the person calling would've also needed to know personal information about Mr S which he wouldn't have stored on his phone. In any case, I've listened to recordings of the calls with HSBC and of Mr S speaking to our service, and the voices match up – it sounds like the same person. I find it's most likely that it was Mr S who spoke with HSBC – which would mean that Mr S was knowingly involved with the fraud. As noted above, this is only one of multiple pieces of evidence which support Mr S being knowingly involved.

Lastly, I've not seen any evidence that makes it seem implausible or unlikely that Mr S gave someone permission to use his account or that he was otherwise knowingly involved in the fraud.

In summary, Mr S received and benefitted from the proceeds of fraud. He declined to speak with HSBC about it when he would've had every reason to talk to them if he was an unwitting participant. His testimony has been implausible – he says he lost his card and the phone he used for online banking, but he didn't report the card or phone as lost and he was still making his usual online banking payments afterwards. Mr S would've been aware of the fraudulent activity, but he didn't report it. And it appears that Mr S called HSBC to get help with moving on the fraudulent funds. As far as I can see, the evidence strongly supports that Mr S was knowingly involved in the fraud, whether directly or as a money mule.

So it seems fair that HSBC registered the appropriate marker at CIFAS. It follows that it's also fair they closed Mr S's accounts, which they were allowed to do under the terms. This is a difficult message for me to give, and I know it's a difficult message for Mr S to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I don't uphold Mr S's complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 October 2023.

Adam Charles
Ombudsman