

The complaint

Mr A complains HSBC UK Bank Plc closed his account and registered his details with CIFAS the UK's fraud alert service. Mr A would like £515.68 returned and the CIFAS removed.

What happened

Mr A had an account with HSBC.

On 28 September 2021 Mr A received a credit of £2,400 into his account.

HSBC blocked the account whilst it carried out a review.

They wrote to Mr A on 28 September 2021 and 7 October 2021 asking him to get in touch with them. They needed information about the funds paid into his account.

Mr A provided information to HSBC, but HSBC wasn't satisfied with the information he provided.

HSBC received confirmation from a third-party bank that the funds paid into Mr A's account were not meant for him. Only £515.68 of the £2,400 remained in the account. HSBC sent the funds back to the remitter on 24 January 2021.

The account closed on 25 January 2021. HSBC registered Mr A's details with CIFAS.

Mr A complained to HSBC. HSBC said they were entitled to close the account.

Unhappy with their response Mr A complained to our service. One of our investigators looked into the complaint. He said HSBC hadn't done anything wrong when they closed his account. He said Mr A wasn't entitled to the £515.68 in the account and he thought the CIFAS marker had been correctly applied.

Mr A was unhappy with the view, he said the view suggested he was a fraudster. Mr A said he had been expecting the money he received as he was owed it- this person had confirmed that the money was from him. Mr A hadn't realised that an innocent third party had been involved in the transaction. Mr A had offered to refund the third party.

As there was no agreement 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.

I'll start by setting out some context for the review of Mr A's account. UK legislation places extensive obligations on regulated financial businesses. Financial institutions must establish the purpose and intended nature of transactions as well as the origin of funds, and there

may be penalties if they don't. This applies to both new and existing relationships. These obligations override all other obligations. I am satisfied HSBC were complying with these obligations when they reviewed Mr A's account and asked him for information about the funds received.

HSBC decided to close Mr A's account. As the investigator explained it's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a good reason to do so, this service won't usually say that a bank must keep a customer or require it to compensate a customer who has had their account closed.

I've considered whether HSBC acted fairly in closing Mr A's account. I've looked at the terms and conditions of his account and I'm satisfied they did. The terms and conditions outline that the bank 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 A's account without notice. 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 the bank has applied the terms fairly. And it was entitled to close the accounts as it's already done.

Mr A has said he would like HSBC to return £515.68 to him. I appreciate the frustration Mr A is experiencing however HSBC have shown that Mr A wasn't entitled to the money and Mr A has accepted that the money belonged to a third party. HSBC have returned the £515.68 to the remitter. I can see that there are provisions in the terms and conditions of the account that allow HSBC to do this. I can't see that Mr A has provided proof of his entitlement to these funds, so I won't be asking HSBC to refund this amount to him.

CIFAS Marker

Mr A has said he would like the CIFAS marker removed. He has mentioned that having the marker has made it very difficult for him to continue with his day-to-day activities.

Our investigator outlined in detail the level of evidence required for HSBC to record a CIFAS marker against Mr A – so I won't repeat it in detail here. But briefly HSBC need to be able to demonstrate that there are reasonable grounds to believe that fraud or financial crime has been committed or attempted. And that Mr A was complicit in this fraud or financial crime.

What this means in practice is that HSBC must first be able to show that fraudulent funds have entered Mr A'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.

So, I need to decide whether HSBC had sufficient evidence to meet the standard of proof and load a marker against Mr A. Having looked at all the evidence I'm satisfied they have, and I say this because:

- I've seen evidence that another bank notified HSBC that the £2,400 received into Mr A's account on 28 September 2021 belonged to an innocent third party. Most of the money was spent that day – only £515.68 remained in the account.
- The credit had a reference of an unfamiliar name. Mr A has told us that he was owed money by a friend and although he didn't recognise the payment reference, his friend confirmed that the money came from him. However, Mr A didn't question this further.

- The bank wrote to Mr A twice in September 2021 and January 2022 asking him to contact the bank as they required information regarding the payment. Mr A didn't contact the bank and when he did provide the information, it wasn't sufficient to show he was entitled to the funds.
- Mr A has said he provided evidence in branch that the credit into the account and subsequent transaction were carried out of his own volition and were legitimate. Mr A has said he used the money to invest in crypto currency.
- Although Mr A has said the money received was from tutoring and repayment for damaged items, he is unable to provide supporting evidence.
- Mr A has said he's happy to refund the victim out of his own money in order to remove the CIFAS marker.

In summary based on the evidence I'm satisfied Mr A received a wrongful credit into his account. Mr A has said that the money paid into his account was money he was legitimately owed but he hasn't been able to provide satisfactory evidence of this or of the investment in cryptocurrency. On balance I am satisfied HSBC acted fairly when they registered Mr A with CIFAS, and I won't be asking them to remove the marker.

I accept Mr A has offered to repay the victim out of his own funds however this doesn't change the position, I'm still of the view that HSBC acted fairly, and I won't ask them to remove the marker.

My final decision

For the reasons stated above I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 September 2023.

Esperanza Fuentes
Ombudsman