

The complaint

Mr O has complained that HSBC UK Bank Plc (trading as first direct) registered a marker against him at CIFAS, the national fraud database.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In late 2022, Mr O received £1,350 for the sale of his cryptocurrency.

HSBC received a report that the funds Mr O received were fraudulent. It spoke to Mr O, who initially offered conflicting testimony about why he'd been paid. He later offered proof of the sale, but HSBC had already decided to close his account and register a CIFAS marker against him. It also took £1,252.95 of Mr O's money and transferred it to the original sender.

Our adjudicator looked into things independently and upheld the complaint. HSBC 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.

I need to consider whether this report to CIFAS was made fairly. On this point, HSBC needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities.

Mr O has provided proof of the sale of his cryptocurrency, his message log with the buyer from the crypto platform, and evidence of historical crypto trading. I can see that he sold £1,350 of crypto to a buyer with the same name as the person who paid him, and that he sent the cryptocurrency that was bought. So Mr O was entitled to the funds. I have not found any evidence which actually substantiates he knowingly aided in fraud. So I find that this marker was erroneous. I am glad that HSBC has now agreed to remove it.

It seems that both parties share some responsibility for this erroneous marker. Mr O initially gave odd and conflicting reasons for why he'd received the money. I appreciate he was worried the bank would disapprove of crypto trading, and from the recording of his calls it seems he didn't completely understand what he was being asked or why. But his unreliable testimony was a major factor in this marker being added. I hope that in future, Mr O will be more upfront if questioned by his bank about why he's received money. On the other hand, Mr O did offer HSBC proof of the crypto sale, and had HSBC taken him up on this – as it should have – then I think the matter could have been resolved much earlier.

Indeed, I can see that HSBC is still confused about this payment, as it keeps referring back to Mr O's original testimony about a friend being involved. To clarify: this was not money from a friend, it was a payment for a cryptocurrency sale. The evidence is clear that this sale went through and Mr O provided the crypto. I am satisfied that Mr O was entitled to the money he received.

So while HSBC may not have acted unreasonably in adding the marker at first, it's right that the marker is now removed. I also don't think HSBC acted unreasonably in closing the account given its understandable concerns about the account's activity – ultimately, it was entitled to close it and it did so under the terms of the account.

Where HSBC was not justified was in taking Mr O's money. As above, Mr O was entitled to this money, as he got it from a genuine sale where he provided what was bought. And he had no reasonable basis to think the money came from fraud – the name of the seller on the crypto platform matched the name of the person who paid him. Mr O made a sale in good faith, and HSBC was not justified in leaving him deprived of both his goods *and* the money paid for his goods. It may well be that the buyer's money came from fraud – or it may be that they submitted a false fraud claim – but either way, it would be unfair and unreasonable to hold Mr O liable for the scammer's actions and to leave him out of pocket when Mr O didn't defraud anyone.

While, generally speaking, banks should try to return money that was sent because of fraud, they must first investigate fully and find out whether the recipient was acting fraudulently themselves or not – which Mr O was not. Mr O offered evidence he'd received the money in good faith for a genuine sale, but HSBC didn't take him up on that. And while HSBC may have had an indemnity from the sending bank, that's just a promise between two banks – it does not allow HSBC to take customers' money if it otherwise shouldn't.

I find that HSBC did not have an entitlement to take £1,252.95 of Mr O's own money, and that it did so without Mr O's consent – meaning this was unauthorised. So HSBC is liable for reimbursing Mr O for this unauthorised transaction. It will also need to add simple interest, to compensate Mr O for the time he was without his money.

Putting things right

HSBC UK Bank Plc should:

- remove the fraud marker in dispute, if it has not done so already;
- reimburse the £1,252.95 it took; and-
- pay simple interest to Mr O on that £1,252.95, at the rate of 8% simple a year, payable from the date it was debited until the date it's returned[†]. This is to compensate Mr O for the time he didn't have his money.

[†] If HSBC considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mr O how much tax it's taken off. It should also give Mr O a tax deduction certificate if he asks for one. Mr O may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold Mr O's complaint, and direct HSBC UK Bank Plc to put things right by doing what I've said above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 September 2023.

Adam Charles
Ombudsman