

Complaint

Mr B is unhappy that HSBC UK Bank Plc (“HSBC”) recorded a fraud prevention marker against him.

Background

In July 2021, Mr B applied for an HSBC bank account. HSBC was concerned that Mr B made material misrepresentations in the personal information he provided. So it declined Mr B’s application and also recorded a fraud prevention marker against him - in particular, HSBC was concerned that Mr B had said he lived at his current address since 1 April 2018 but it had information, which in its view, demonstrated that he had lived at two further addresses, which he hadn’t disclosed, since then.

Mr B complained after learning that HSBC had recorded a fraud prevention marker against him. HSBC looked at Mr B’s complaint and didn’t uphold it. As Mr B remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr B’s concerns. He thought that HSBC had unfairly recorded the fraud prevention marker against Mr B, as it hadn’t met the evidential requirements to do so. HSBC didn’t respond to our adjudicator’s assessment. So the complaint was passed to an ombudsman for a final decision as per the next stage of our dispute resolution process.

My findings

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

The marker that HSBC has filed is intended to record that there was ‘application fraud’ – relating to Mr B using his real name but providing other false information in an application for a financial product. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Mr B is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern.

The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain their version of events in order to understand their level of knowledge and intention.

In order to determine Mr B's complaint, I need to decide whether I think HSBC had enough evidence to show that Mr B did provide materially false information. Secondly, HSBC also needs to have strong evidence to show that Mr B was deliberately dishonest when doing so and that any discrepancies weren't simply down to a mistake or misunderstanding. It's also important to note HSBC had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, I don't think that HSBC did have enough to record the fraud marker it did.

I firstly say this because HSBC hasn't provided me with anything to indicate that it obtained Mr B's version of events before recording the marker. I accept it believed the information it obtained from credit reference agencies indicated that Mr B had failed to disclose addresses that he'd lived at. But at best this, on its own, is only really enough to trigger suspicion or concern and it doesn't clearly demonstrate that Mr B was deliberately dishonest. Indeed, I have to question how HSBC could possibly have assessed Mr B's knowledge and intention before it recorded the fraud marker against him when it looks like it didn't speak to him before doing so - arguably this in itself is unfair.

In any event, I'm not persuaded that the information HSBC has provided actually clearly demonstrates that Mr B did provide false information when making his application for a bank account. HSBC has said it considers Mr B provided false information because he said that he lived at the address he provided on his application, which I'll refer to as address A, since 1 April 2018. It says this is false because the credit checks it carried out show that Mr B had adverse credit information recorded at two other addresses after this date.

I've looked at the information provided. And I agree that adverse information was recorded on an account registered to a second address, which I'll refer to as address B, on 26 August 2020 and on an account registered to a third address, which I'll refer to as address C, on 31 May 2019. It's clear that the adverse information on the accounts registered at addresses B and C was recorded after 1 April 2018.

However, I'm mindful that the same credit search information also shows that account B was opened in February 2017 and account C was opened in March 2018. So both of these accounts were opened prior to the date that Mr B said he moved to address A. Furthermore, the credit search information also shows that Mr B was removed from the electoral roll at address B in December 2018 and removed from the electoral roll at address C in January 2018. So Mr B was removed from the electoral roll at both addresses well in advance of the adverse information, which HSBC is relying on, having been recorded. And in the case of address C Mr B was removed from the electoral roll before the date he said he moved to address A.

In my view, the information provided, at best, demonstrates that Mr B may have failed to keep some of his creditors up to date with his change of address – although he has said that address B is where his mother continued to live (which is supported by the electoral roll information HSBC has provided) and address C is where his grandmother lives. But given the accounts HSBC are referring to were opened before he says he moved address, I'm satisfied what was recorded in relation to them and when, which appears to form the basis of HSBC's decision to record a fraud marker, don't in themselves conclusively demonstrate that Mr B provided false information.

I'd also question why Mr B would have dishonestly answered when he moved to address A, given that a significant amount of adverse information was, in any event, recorded against him at address A, when he made his application to HSBC. In these circumstances, it is difficult for me to see what benefit Mr B would've seen by withholding addresses with

adverse information linked to them, when HSBC would have seen adverse information at address A anyway.

Of course, I accept it is possible that Mr B intentionally tried to deceive HSBC in the way it says it did. And that was enough for it to be suspicious or concerned. But the important thing here is that it is HSBC's responsibility to demonstrate that Mr B knowingly and dishonestly provided false information. And I think that it has failed to do that here.

HSBC needed to have relevant and rigorous evidence such that it could report the matter to the police. Simply pointing out that adverse information was recorded against Mr B, at different addresses, at a time he says he was living somewhere else – especially where it didn't obtain Mr B's version of events this and it hasn't even shown us how its question on address history was framed - just isn't enough to meet what is a high bar. This is especially the case seeing as the facts and circumstances of this case appear to support Mr B's explanation being plausible.

Overall and having considered everything, I don't think that HSBC had sufficient evidence to meet the test for recording a fraud marker against Mr B. As this is the case, I think that it was unfair for HSBC to record a fraud prevention marker in the circumstances that it did. So I'm upholding Mr B's complaint and HSBC needs to remove any and all fraud markers it has recorded.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. HSBC UK Bank Plc should remove any and all fraud markers it has recorded against Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 August 2022.

Jeshen Narayanan
Ombudsman