

Complaint

Mr M is unhappy that HSBC UK Bank Plc (“HSBC”) closed his Basic bank account without notice and without telling him why.

Background

In 2021, Mr M applied for a business bank account with HSBC. During the application process, HSBC noted that another financial institution had recorded a fraud marker against Mr M some two and a half years earlier. As a result of this, HSBC not only decided to decline Mr M’s application for a business account but also took the decision to close his Basic bank account without notice.

Mr M complained to HSBC. HSBC looked at Mr M’s complaint and didn’t uphold it. As Mr M remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr M’s concerns. She didn’t think that HSBC had done anything wrong or had treated Mr M unfairly. Mr M disagreed and asked for an ombudsman’s review of his complaint.

My provisional decision of 23 June 2022

I issued a provisional decision – on 23 June 2022 - setting out why I intended to uphold Mr M’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by saying that HSBC had stated that it was entitled to close Mr M’s account without notice as its terms and conditions permit it to do so. It referred to its terms and conditions which permitted it to close an account straight away where, amongst other things, it reasonably believed:

“you are involved, in any criminal activity, it doesn’t matter whether or not this is linked to banking with us”.

HSBC further explained that it could not be forced to bank with a customer where it didn’t wish to do so, especially where it suspected criminal activity was taking place. And, in its view, the discovery of the fraud marker registered against Mr M met this criteria.

I thought about what HSBC said. But I thought that it has conflated two separate issues in an attempt to justify its position. I said this because I did accept that HSBC, or any other bank for that matter, is under no obligation to continue offering an account to a customer if it doesn’t wish to do so. So I was satisfied that HSBC was perfectly entitled to take the decision that it no longer wanted Mr M as a customer.

But I then explained that HSBC’s own terms and conditions, as well as good industry practice, required HSBC to provide appropriate notice before closing an account. This is to allow a customer to make alternative arrangements with a different bank. And, what I was

concerned about in this case wasn't HSBC's decision to close Mr M's account but its failure to provide him with notice before doing so.

I thought that HSBC appeared to be arguing that its discovery of the fraud marker meant that it was reasonably entitled to suspect that criminal activity is (sic) taking place. I used the word is as that's the word HSBC used and I thought it was important because this as well as the terms and conditions appeared to be concerned with criminal activity taking place at the time. I thought that the use of these words was to reflect the fact that a closure without notice was typically a proportionate response to an immediate risk.

However, in this case, the marker HSBC discovered was recorded over two and a half years previously. So leaving aside my concerns on whether the discovery of the marker, in itself, was enough for HSBC to have reasonably concluded Mr M had previously been involved in criminal activity, I couldn't see that how a marker recorded in March 2019, clearly demonstrated that Mr M was involved in criminal activity in October 2021. I said this while especially mindful that there was no suggestion that HSBC had any concerns about the way that Mr M had been operating his HSBC Basic account in the period that he had it either.

So given the circumstances, I wasn't persuaded that it was reasonable for HSBC to believe that Mr M was involved in criminal activity in October 2021, or that HSBC's discovery that a fraud marker was registered against Mr M in March 2019, meant that he presented an immediate risk which necessitated his account being closed without notice.

I accepted that the discovery of the fraud marker might have led HSBC to conclude it no longer wished to bank with Mr M. And that this was a commercial decision it was entitled to make. Furthermore, it was also my understanding that Mr M also had at least one other bank account elsewhere and this also provided HSBC with another valid reason to close Mr M's Basic bank account. That said, I was satisfied that HSBC ought to have provided Mr M with notice in advance of taking this action in either of these scenarios.

Mr M explained that HSBC closing his account immediately and without notice caused him distress. I could also see that he had to manually move all his direct debits at very short notice. I thought that all of this would have been avoided if HSBC had treated Mr M fairly and reasonably and provided him with reasonable notice before closing his account.

As this was the case, I thought that HSBC needed to pay Mr M £150 in compensation for the distress and inconvenience its actions in unfairly closing his account without notice caused.

Overall and having considered everything, I set out that I was intending to issue a final decision which concluded that HSBC didn't have sufficient grounds to close Mr M's account without notice. And so it was unfair for HSBC to close Mr M's account in the way that it did.

Responses to my provisional decision

HSBC responded saying while it didn't agree with what I said, it was prepared to settle Mr M's complaint in the way I set out in my provisional decision.

Mr M also confirmed receiving my provisional decision. He said he wasn't happy as another of his accounts was now closed. Mr M also questioned why HSBC allowed him to use his account until October 2021 if it believed he'd been involved in fraud in 2019.

My findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I thank the parties for their responses. Mr M remains unhappy as another of his accounts, with a different bank, has been closed since his HSBC basic account was. But I don't think that Mr M's other account was closed because of anything that HSBC did.

To explain, HSBC closed Mr M's basic account because it saw a fraud marker another financial institution had recorded against him in 2019. I'm not in a position to say what this information was, or who logged it. But if Mr M goes to <https://www.cifas.org.uk/contact-us/subject-access-request> he should be able to find out what information is held about him and how he can dispute it.

Furthermore, it might help for me to explain that while another financial institution recorded a fraud marker against Mr M in 2019, HSBC only became aware of it when Mr M applied for a business account in 2021. This is why HSBC didn't do anything about Mr M's account until then. I'm satisfied that the discovery of the fraud marker together with the fact that Mr M had another current account elsewhere meant that HSBC was reasonably entitled to close Mr M's account, if that's the action it wished to take. But this would only be fair and reasonable in the circumstances, if HSBC provided the correct notice before doing so.

As HSBC failed to provide Mr M with reasonable notice before closing his account that is why I said that it needed to pay £150 in compensation. So while I understand Mr M's disappointment at HSBC no longer wishing to provide him with an account, as it doesn't have to have him as a customer if it doesn't want to, I won't be asking it to reopen his account.

Overall and having considered the further points made in response to my provisional decision, I'm still upholding Mr M's complaint. So HSBC needs to pay Mr M £150 in compensation.

My final decision

For the reasons I've explained above and in my provisional decision of 23 June 2022, I'm upholding Mr M's complaint. HSBC UK Bank Plc needs to pay Mr M £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 August 2022.

Jeshen Narayanan
Ombudsman