

## **Complaint**

Mr N is unhappy that HSBC UK Bank Plc (trading as “First Direct”) recorded a fraud prevention marker against him.

## **Background**

In May 2021, Mr N applied for a First Direct bank account. First Direct was concerned that Mr N made a material misrepresentation in the personal information he provided. So it declined Mr N’s application and also recorded a fraud prevention marker against him - in particular, First Direct was concerned that Mr N hadn’t disclosed an address which he’d had adverse information recorded against him at.

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

One of our adjudicators looked into Mr N’s concerns. He thought that First Direct had unfairly recorded the fraud prevention marker against Mr N, as it hadn’t met the evidential requirements to do so. First Direct disagreed. 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 First Direct has filed is intended to record that there was ‘application fraud’ – relating to Mr N 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 N 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 N’s complaint, I need to decide whether I think First Direct had enough evidence to show that Mr N did provide materially false information. Secondly, First

Direct also needs to have strong evidence to show that Mr N 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 First Direct 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 First Direct did have enough to record the fraud marker it did.

I firstly say this because First Direct hasn't provided me with anything to indicate that it obtained Mr N's version of events before recording the marker. I accept it believed the information it obtained from credit reference agencies indicated that Mr N had failed to disclose an address 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 N was deliberately dishonest. Indeed, I have to question how First Direct could possibly have assessed Mr N'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 First Direct has provided actually clearly demonstrates that Mr N did deliberately provide false information when making his application for a bank account. First Direct has said it considers Mr N provided false information because the credit checks it carried out show that Mr N had adverse credit information recorded at another address, which I'll refer to as address B, which he hadn't declared.

I've looked at the information provided. And I agree that adverse information was recorded on an account registered in Mr N's name at address B. However, I'm mindful that the same credit search information also shows that Mr N was registered on the electoral roll at the address he provided on his application, which I'll refer to as address A, since October 2012. And I can't see that Mr N was asked to provide the details of any other addresses he might have been living at, at the time of his application. So in my view, while First Direct may feel that it received incomplete information, I don't think that this was because anything Mr N said or did. He simply answered the questions that First Direct asked.

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

Of course, I accept it is possible that Mr N intentionally tried to deceive First Direct 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 First Direct's responsibility to demonstrate that Mr N knowingly and dishonestly provided false information. And I think that it has failed to do that here.

First Direct 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 N, at a different address, at a time he says he was living somewhere else - especially where it didn't obtain Mr N's version of events on this and it didn't ask Mr N about this address - 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 N's explanation being plausible.

Overall and having considered everything, I don't think that First Direct had sufficient evidence to meet the test for recording a fraud marker against Mr N. As this is the case, I think that it was unfair for First Direct to record a fraud prevention marker in the

circumstances that it did. So I'm upholding Mr N's complaint and First Direct needs to remove any and all fraud markers it has recorded and also pay Mr N £250 for the distress and inconvenience its actions caused.

### **My final decision**

For the reasons I've explained, I'm upholding Mr N's complaint. HSBC UK Bank Plc should remove any and all fraud markers it has recorded against Mr N and also pay him £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 16 November 2022.

Jeshen Narayanan  
**Ombudsman**