

The complaint

Mr E complains that HSBC UK Bank Plc ('HSBC') placed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. He says this is preventing him from opening another bank account and wants the marker removed.

What happened

Mr E tried to open a bank account with HSBC in November 2021 but his application wasn't successful. He says he later found out that HSBC recorded a marker against him on CIFAS which is a fraud prevention agency with a large database. Mr E obtained a copy of the record which says that his application was recorded as a "false application" and the reason for this was an undisclosed address with adverse credit data.

Mr E got in touch with HSBC in December 2023 and complained. He said he was not the victim of identity theft, and it was him who tried to open the account. He said he had been dealing with this issue for two years and that it was impacting his family. Mr E asked for the marker to be removed.

HSBC responded to Mr E's complaint but it didn't uphold it. It said that the CIFAS marker was placed in line with its terms and conditions and didn't agree it should be removed. It said it will remain on the database for six years. HSBC said it wasn't able to discuss further details of its investigation or provide a full explanation and referred Mr E to our organisation. Mr E then brought his complaint to us. He said he hasn't been able to open a bank account and isn't able to receive any wages or funds in his name. This is impacting his ability to rent as he is unable to prove his income. He also provided his address history.

Our investigator asked Mr E why he didn't disclose an address he resided in between 2018-2020 (which I'll refer to as 'address B') on the application bearing in mind he had to disclose addresses he'd been living at during the previous three years. Mr E said it was because he wasn't receiving any correspondence at that address. He said due to a family situation he was also living at another address from 2017, the one he declared on his application ('address A') but moved out between 2018 and 2020. He said he didn't include address B to avoid confusion.

Our investigator reviewed the complaint but didn't uphold it. She thought HSBC was acting fairly when it loaded the marker. She said that for HSBC to record a "false application" marker it must show that it has grounds for more than mere suspicion or concern that fraud was committed. She thought HSBC had reasonable grounds to record the marker. Our investigator added that HSBC's searches showed that there were "adverse credit data" at address B, the undisclosed address.

Mr E didn't agree and asked for an ombudsman's decision. He said his application was not fraudulent and that he shouldn't be punished for simply wanting to open an account. He said that this situation has caused him a lot of distress and is destroying his chances of building a family and having a healthy financial status.

The matter was then 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.

HSBC has recorded a marker for "application fraud" or "false application" against Mr E. HSBC isn't required to prove beyond reasonable doubt that Mr E is guilty of a fraud or financial crime but it must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- "There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted;
- The evidence must be clear, relevant and rigorous;
- The conduct of the subject must meet the criteria of one of the case types;
- In order to file the member must have rejected, withdrawn or terminated a product on the basis of fraud unless the member has an obligation to provide the product or the subject has already received the full benefit of the product."

What this means in practice is that HSBC must be able to show that Mr E was deliberately dishonest when applying for his account with the bank.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks.

The relevant finding for me to make is whether I think there is sufficient evidence to meet the standard of proof, to determine whether HSBC was entitled to escalate its concerns.

I've thought about whether I'm satisfied with the evidence HSBC has provided first, before moving on to consider Mr E's response. I've seen a copy of the account application made in November 2021. HSBC has shown that Mr E said that he had been living at address A since 2017 and that he didn't provide address B as a previous address. It has also shown us that address B had adverse credit data on it. I've also seen other evidence, which HSBC shared with us in confidence and which I can't share here, and it shows there were more inconsistencies in Mr E's account of events. Overall, I think HSBC has demonstrated that its checks were of sufficient depth. And it's also retained its records of these checks.

Mr E told us that he failed to disclose address B because he didn't receive correspondence there. But I don't think that is true as the adverse credit data is recorded against Mr E at that address. So the company that recorded that data must have had that address as Mr E's address. And I think it's more likely than not that it was writing to him at that address. Mr E has provided us with a copy of his CIFAS report and it shows address B as one of his "other" addresses. Again this, to me, shows that he was using that address as a correspondence address.

I appreciate Mr E says that his address history is complex due to family issues. But he, himself, provided us with details of his addresses when he first brought his complaint to us. And in relation to address A- which he said he'd been living in from 2017 in the 2021 application; he told us he only lived there between 2020 and 2022. Mr E has also provided a letting agreement dated July 2020 for address A but he also said this was his family home so it's not clear why he would need a letting agreement to move back to his family home. Mr E did say that he had been at address A since 2017 and that it is his uncle's address but didn't move in officially until 2020. But the letting agreement he provided shows the name of the landlord as well as their address and it is not address A. Whatever the case may be, as I said I appreciate that Mr E's address history may be complex, but I think it's also clear that his account to us and to HSBC has been inconsistent.

I've considered if I think Mr E completed his application, leaving out his second address, intentionally and dishonestly. And I think he most likely did. I say this because by leaving that address out, which contains adverse credit data, the chances of obtaining an account would seemingly improve. So I think there would have been something to gain by leaving the second address out.

This leads me to conclude that HSBC had sufficient evidence to conclude fraud was likely attempted.

I appreciate Mr E will be disappointed with my decision and I fully appreciate the impact the fraud marker is having on him. But for the reasons I've given I don't think HSBC has acted in a way that was unfair or unreasonable in the circumstances. Our investigator has provided him with some details of other types of accounts he could open in the meantime to ensure that he receives his wages and pays his bills and I hope he considers those options.

My final decision

For the reasons above, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 July 2024.

Anastasia Serdari
Ombudsman