

The complaint

Mr E has complained that HSBC UK Bank Plc registered a marker against him at CIFAS, the national fraud database.

What happened

In September 2021, Mr E applied for a current account with HSBC. The application asked where he'd lived in the last 3 years. He provided his current address at the time, saying he'd lived there since mid-2017. He was not asked for further addresses.

HSBC reviewed the application, and found that Mr E had an account at a previous address which opened in 2016, but defaulted in 2019. It therefore felt that Mr E had withheld key address information. It did not check this with Mr E, but instead registered a marker against him at CIFAS.

Our investigator didn't uphold the complaint. Mr E appealed, so the complaint's been passed to me to decide.

I sent Mr E and HSBC a provisional decision on 1 May 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

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.

HSBC has confirmed that the application only asked Mr E where he'd lived in the last 3 years. This also appears to be the case when looking at its application process for this type of account. It did not ask, for example, whether Mr E had any other adverse information registered in the last six years, nor whether he had any old accounts at old addresses which subsequently had adverse information registered.

This is important. The electoral roll shows that Mr E was resident at the address he provided since 2017 – more than 3 years before the application. His credit file data shows that all new accounts used that address from mid-2017, in line with the move-in date he stated. Mr E provided a landlord's reference which also said he moved there in mid-2017. Insolvency records confirm that Mr E was at the address he provided since at least 2018. And HSBC has not provided anything which shows or substantiates that Mr E was resident at any other address at the time. So we can be reasonably satisfied that the address data he gave was in fact correct, and that he did not withhold an address he was resident at in the last 3 years.

While Mr E did get a default at an old address, that address was from more than 3 years before the application. The electoral roll shows that he moved out of that address in 2017 and someone else subsequently lived there. And the account in question was opened more than 3 years before the application. It seems all that happened is that Mr E opened the account when he was living at that old address, then that account later defaulted in 2019, after Mr E had moved out. This does not show or substantiate that Mr E was actually resident at that address in 2019. And there were no other relevant accounts at that address – all the other accounts had also opened more than 3 years before the application, or were in the other resident's name rather than Mr E's.

So HSBC's assertion that Mr E was deliberately withholding address data does not appear to hold up. He wasn't asked about his addresses from before 2018, so it makes sense that he didn't provide them. Given that the application only asked for where he lived in the last 3 years, Mr E would not have reasonably known that HSBC also wanted addresses he had not lived in in the last 3 years but which had credit file data on them.

As HSBC should know, it is expected to contact customers and given them the opportunity to clarify things before registering a CIFAS marker. But as far as I can see, it did not do so here. This is concerning. CIFAS markers can have serious effects, and must not be added without proper investigation. Further, even if I had agreed that it was erroneous for Mr E to leave out the prior address – which I do not – that could have simply been a mistake. As a reminder, HSBC needed more than just a suspicion or concern. It's difficult to see how HSBC could be satisfied that Mr E deliberately tried to mislead it without clarifying the matter with him. And as HSBC failed to contact Mr E at the time, I don't have any contemporaneous testimony to compare his current testimony to. I find that HSBC's actions here did not constitute good practice.

It follows that I currently think that HSBC did not have sufficient grounds to add this marker, and that it should be removed.

When a business gets things wrong, we often tell them to pay compensation, too – to acknowledge their error and the impact it had. Here, I understand that this marker caused Mr E significant stress and inconvenience over a lengthy period, as it substantially hindered him from keeping even a basic account. Though I've also kept in mind that he's been in an insolvency during the period the marker was in place, which would have affected his ability to open certain accounts as well. So taking into account the likely impact that HSBC's errors had on Mr E, along with our guidelines for compensation, I currently think HSBC should pay him £300 to put things right.

I said I'd consider anything else anyone wanted to give me. Both sides replied, and I'll talk about their replies below.

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.

Mr E accepted the provisional decision in full.

HSBC agreed to now remove the marker, but maintained that it was correct to place it initially. It felt that it had made no error.

While I am glad that HSBC is removing the marker, I am very concerned by its assertion that it was correct to add it and that it made no error.

Contrary to HSBC's assertion, HSBC failed in its obligations at every step of the way:

- HSBC's reasoning for the marker was irrational. It registered the marker based on Mr E not providing it with information which it had not asked him for and which he would not have reasonably known it wanted. Mr E provided the information he was actually asked for, and it made sense for him not to provide the outdated address.
- HSBC failed to contact Mr E to discuss the matter before adding the marker, when it was required and expected to do so.
- HSBC failed to meet the evidential bar needed for a CIFAS marker, but registered the marker anyway.
- HSBC failed to remove the marker at Mr E's appeal, and has continued to defend it even at this late stage, despite the unambiguous evidence that it was wrong.

Let me be clear: this was not a finely balanced case. It is clear that HSBC was wrong to add this marker. HSBC's actions here were unreasonable, were a series of failures, and constituted poor practice. I expect HSBC to take the lessons from this case on board.

Other than that, neither side sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct HSBC UK Bank Plc to:

- remove the marker in dispute and any related fraud marker it added, and-
- pay Mr E £300 compensation for the trouble and upset it caused.

My final decision

I uphold Mr E's complaint, and direct HSBC UK Bank Plc to put things right in the way I set out above.

If Mr E accepts the final decision, HSBC UK Bank Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 June 2024.

Adam Charles
Ombudsman