

The complaint

Mr S complains that HSBC UK Bank Plc made an error in respect of refunding payments under the direct debit guarantee, and has failed to comply with its obligations under that guarantee. Further that it failed to comply with a subject access request (SAR) to provide bank statements.

What happened

In November 2022, Mr S went into a branch of HSBC with a view to making a request that it refund all direct debit payments made to two businesses, who I'll call "T" and "B", concerning mortgage payments. He reiterated that request in a phone call on 22 November. Two days later he called to cancel the request in respect of T, but said that he still wished to proceed to reclaim the payments from B.

Due to an error on its part, HSBC reclaimed the payments from T and paid them to Mr S, to his non HSBC account. These amounted to over £28,000, and Mr S only realised this when he received a notification from T in March 2023 that he was in arrears with his mortgage to that amount. He requested HSBC to refund the monies to T - it responded that it would do so if he returned the monies he'd received, either to it or to T. Mr S initially declined to do so but relented and paid the monies back to T. He made a complaint to HSBC saying this was done under duress, and asked HSBC to comply with the direct debit guarantee and pay the £28,000 back to him. He also asked it to refund the direct debit payments in respect of B.

HSBC responded and apologised for its error. It offered Mr S £300 compensation. In respect of B, it noted that a direct debit had been set up in error in 2014. Two direct debit payments went out of Mr S's account totalling just over £236. It added 8% interest to those payments and refunded them to Mr S's account.

Mr S said that he wanted HSBC to provide his bank statements going back to 2002 so that he could assess how much was owed back in respect of direct debit payments. In error HSBC failed to comply with his request, and Mr S made a complaint to the Information Commissioner's Office (ICO). The ICO noted that HSBC had admitted that an error was initially made by the handler dealing with the complaint in omitting to progress the request for statements. In that respect, the ICO concluded that HSBC had not complied with its data protection obligations. It noted further that feedback and further training had been provided to the individuals and teams involved to avoid a recurrence of this error. HSBC provided the available statements to Mr S. Those statements showed only two direct debit payments had been made to B.

On referral to the Financial Ombudsman Service, our Investigator thought that HSBC had acted appropriately in its payments of compensation and the refund of the direct debits.

Mr S did not agree and insisted that he was due the refund of £28,000 and further compensation. He also said that there were more direct debits and that he had raised an SAR with B to establish which bank the direct debits had come from. He requested that we wait for the results of that SAR before proceeding

The matter was passed to me for an Ombudsman's consideration. I reviewed the matter and, noting the ICO's ruling, proposed that HSBC pay Mr S a further £100 in respect of the distress and inconvenience caused by HSBC's delay in providing those statements.

HSBC said it couldn't see any ICO complaints and any redress, feedback or action would have to be taken under that specific complaint.

Mr S said he didn't think that an extra £100 is enough to compensate for the amount of time, and effort, and the anxiety and extreme stress that this controversy has cost him.

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.

I have listened to the phone calls when Mr S confirmed the request for the refund of the direct debits, and his amending that request to cancel the refund from T. Nevertheless in error HSBC processed the refund from T, meaning that Mr S went into arrears on his mortgage by over £28,000.

When it was informed about the error, HSBC requested that Mr S either pay back the money he received to it or pay it directly to T. And I note that it offered Mr S £300 compensation. I think that was the right approach to take, and I also think that HSBC complied with the terms of the direct debit guarantee. It made the refund to Mr S and then when Mr S advised it of its error, it requested that he paid the money back. I understand that Mr S is aware of the terms of the direct debit guarantee, which says that:

“If you receive a refund you are not entitled to, you must pay it back when the organisation asks you to.”

And the guarantee does not affect the contract with the business receiving the payments, so if he was still liable to make the payments, that business would still have been able to reclaim them from him.

I can understand that Mr S was shocked to receive a letter from T advising that he was in arrears by over £28,000. And for that HSBC has offered £300 compensation for distress and inconvenience. But it is not, in my view, liable to pay Mr S £28,000. If an error is made then we would expect Mr S to be put into the position he would have been in if the error had not been made. Mr S had told HSBC not to proceed with reclaiming the direct debits from T. And he hasn't notified us of any financial losses directly attributable to the mortgage going into arrears. So, it appears to me that, with regard to T, he is in the position he would have been in if the error had not been made, with an offer of payment of £300.

With regard to how it affected Mr S's credit status, I have noted that HSBC offered to get any adverse credit information removed as a result of its error. However, as it later advised, it could not do that because it was not responsible for any information entered onto his record in respect of his mortgage with T. But, despite the warnings in its letters following his going into arrears on his account, I've seen no evidence that T actually entered any adverse information.

I further understand that Mr S has had his credit limit reduced on his credit card. Whilst he has shown us evidence of this, I haven't seen any evidence that this reduction is connected with his mortgage account. This is something he should take up with his credit provider.

As regards the refund of direct debits from B, the evidence from HSBC and shown on his statements is that only two direct debits went out of his account to B. HSBC has refunded those direct debits, and paid interest at the appropriate rate (which is the rate of interest we would use). So I think it complied with the direct debit guarantee and acted appropriately in that respect.

As regards the provision of copy statements, I have reviewed the several emails between the parties following HSBC's final response letter. In those letters Mr S made it quite clear that he wanted to make an SAR specifically for the bank statements. And HSBC failed to provide these, as was noted in the ICO's ruling. This was given in October 2023 and I think it is clear that Mr S was pursuing this part of the complaint. As the Investigator also mentioned this in his view, HSBC cannot have been under the impression that I would not be considering this. In any event it is had more than 8 weeks to consider the matter. I have reconsidered the point, my findings are set out the next paragraph and I gave both parties the opportunity to respond to those findings.

I can see that Mr S made a request for those statements several times. He made a request for other information which HSBC provided but it failed to provide the copy statements. As a result, as I have noted above, the ICO said that HSBC had not complied with its data protection obligations. I note that HSBC admitted its error in that respect and that it gave feedback to its complaint handlers. I note also that it did provide the copy statements. I've noted what Mr S says, but I think that for the distress and inconvenience caused by the delay in receiving his copy statements, HSBC should pay Mr S a further £100.

I note that Mr S has made a request that we delay this matter further while he waits for the results of an SAR that he has made to B. I have carefully considered this but in the interests of being fair to both parties, and bearing in mind my duty to be impartial, I think that I should make a decision now. In the event that Mr S is able to produce more evidence concerning direct debits paid to B and relevant to his complaint to HSBC, he will need to put that evidence to HSBC and it will need to decide at that stage what to do about it.

My final decision

I uphold the complaint in part, and require HSBC UK Bank Plc to pay to Mr S a total of £400 compensation, including the £300 previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 March 2024.

Ray Lawley
Ombudsman