

## The complaint

Mr C complains about a number of issues concerning the retention and processing of his data by HSBC UK Bank Plc, its failure to respond to a letter from him and its refusal to correspond by email.

## What happened

Mr C had issues with HSBC relating to its retention of his data and his making of a number of SARs (Subject Access Requests) to it. Those issues were dealt with by my Ombudsman colleague in her final decision of 2 March 2023. Also a jurisdiction decision was issued by another Ombudsman colleague, finding that Mr C was out of time to refer his complaint to the Financial Ombudsman Service. This concerned issues that Mr C had regarding HSBC's retention of old data and the service he received when visiting a branch of the bank in 2018.

Mr C made a further complaint to us in September 2023 asking that his former complaint be reopened or a new complaint be set up.

Our Investigator considered that Mr C's complaint should be dismissed. This was on the basis that she thought the subject matter of his complaint had already been considered by the Financial Ombudsman Service.

Mr C disagreed and said that they were new issues.

I issued a decision dismissing the majority of Mr C's complaints. However I said that the following issues could be considered and, provisionally I went on to consider them and didn't uphold them:

- non-receipt of Mr C's letter of 14 February 2023
- failure to provide the SARs requested
- failure to recognise Mr C's email address

Mr C didn't agree. I will set out his points of dispute, and my provisional findings, below.

## my provisional findings

The following were my provisional findings:

### *issues I can deal with*

These are issues we haven't considered the merits of previously, or previously found to be out of our jurisdiction. In keeping with our role as an alternative complaints resolution service, we deal with complaints informally. So I don't intend to set out every aspect of Mr C's arguments. I set out below what essentially I think his issues are which I will deal with here:

### *non-receipt of Mr C's letter of 14 February 2023*

HSBC advised that it did not receive this letter when Mr C first sent it, by post. Mr C believes that HSBC did receive it and sent a reply to an old address. I'm aware that the use of an old address represented a major part of Mr C's former complaint. But I've seen no evidence that HSBC replied to this letter before Mr C resubmitted it. From what I've seen, he didn't send it recorded delivery so unfortunately there will be no evidence that HSBC actually received it.

### *failure to provide the SARs requested*

In his letter Mr C made SARs relating to five issues. HSBC responded to the first two points (request for dates of account closures). The other three issues it says did not relate to personal data, so it was not required to provide a response under the UK General Data Protection Regulations (UK GDPR). Mr C has set out arguments why he thinks that HSBC should provide the information requested in his SARs. He requests that we deal with those or refer the matter to the ICO (Information Commissioner's Office). He has also provided correspondence which he had with HSBC about the SARs where he argues his case and says he has not had a response to one of his letters.

Mr C is aware of this service's position concerning possible breaches of data protection laws. My Ombudsman colleague in her decision on his previous complaint said the following:

*"This service can't act in place of the ICO, or make a finding about whether or not a business has broken data protection laws. But we can look at what's fair and reasonable in all the circumstances of a dispute."*

So I can't make a finding that HSBC should or should not comply with Mr C's requests. Also, as Mr C has been told by our Investigator, this service does not refer consumers' complaints to the ICO. It is up to Mr C if he wants to refer the matter himself.

### *failure to recognise Mr C's email address*

HSBC has refused to correspond with Mr C by email as it does not have his email address formally registered on file. Mr C has pointed out that he has previously had email correspondence with HSBC. From reviewing the file for his former complaint, I can see that for the most part HSBC corresponded with Mr C by post. I can see that he had one or two emails from the customer care team. I can also see that its data protection team had a secure email service for providing data, although I'm unclear whether Mr C signed up to that.

I'm aware that Mr C emailed HSBC, and it received those emails but responded by post. From what I can see, Mr C did that because he was able to work out what the email addresses were for the advisers who responded to him by post. For general correspondence with him, I think that because of the sensitivity of this case concerning data protection, it would not be appropriate for me to direct HSBC to correspond with an email address which has not formally been registered on its system. It has set out to Mr C the process for formal registration of his email address and I think that is fair and reasonable.

### **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 C is concerned that I haven't followed our normal process in dealing with his complaint. In particular he expected the Investigator to take up the complaints I said we can consider.

The rules require that we operate a two stage process whereby both parties must be given the opportunity to make representations and I can then make a provisional determination. There's no requirement under the rules that require the first stage to be undertaken by an investigator.

Here, in my view the complaints which we can consider are quite narrow and only concern particular issues. I considered that I had all the information necessary to make a decision but of course Mr C and HSBC needed to be apprised of my provisional findings to give them the opportunity to make any comments they wished to make. I should also say that HSBC has not made any representations in secret about the complaints which I said we can consider. I did ask HSBC why it had previously corresponded by email with Mr C and it responded by drawing my attention to his previous SAR in November 2020 (as set out below). It also reiterated that his email address is not registered on its system.

I must also reiterate that I won't set out each and every point that Mr C has made although I confirm that I have considered his responses in full.

*non-receipt of Mr C's letter of 14 February 2023*

Mr C says this complaint is that HSBC failed to respond to his letter, not that it was not received. He says he has proof that it was posted and HSBC has not provided proof that it was not delivered.

Unfortunately proof of postage is not proof of delivery and letters do go astray in the post. I can't ask HSBC to prove a negative and as there was no recorded delivery, I can't reach the conclusion that HSBC received it, nor can I speculate whether HSBC responded to Mr C's old address. I consider it reasonable to accept its denial that it did so.

### **SARs**

Mr C says that he complained that he'd received no response to two limited SARs, but that situation was not considered. And that this service's position is - we'll consider a failure to disclose a particular document but we won't consider a failure to respond to two SARs. He says he's asked for two particular pieces of information that haven't previously been disclosed (limited SARs), despite HSBC's numerous assurances that all's been disclosed.

Mr C did follow up his SAR with further SARs. In particular he says he hasn't received a response to his further SARs. But I think that this ties in with the question of whether HSBC will correspond with him by email. As I've set out above, his email address hasn't been formally registered with HSBC and Mr C refuses to complete the necessary application to do this. In its email to Mr C in April 2023, HSBC said:

*"I note your new Subject Access Request about your interactions at our ... branch with [name].... However, as outlined in their letter to you dated [...] March 2023, our team need you to complete and return the supplied form to be provided with your personal Information: this situation likely remains to be unchanged."*

So whilst I note that he reiterated and expanded on his SARs, I take the view that HSBC will need Mr C to register his email address with it so that it can correspond with him by email.

With regard to my point about referring consumers' complaints to the ICO, Mr C has pointed out to me an article in our publication "ombudsman news". This refers to cases where people believe that the business has breached the Data Protection Act where we refer such cases to the ICO. I notice the article is over 8 years old, and refers to actual breaches of the Data Protection Act. I said in my provisional decision that we don't refer consumers' *complaints* to

the ICO. By that I meant that we wouldn't, for example, refer a dispute over whether an SAR has been complied with, because a breach hasn't been shown. The ICO has published clear guidance in respect of SARs, and this sets out what the consumer can do to refer an alleged failure to it.

We don't act for consumers in presenting their complaints to the ICO and despite Mr C's concerns that he would not be taken seriously in view of his previous dealings with the ICO, that is not something which we would do on his behalf.

*failure to recognise Mr C's email address*

Mr C says:

*"Just to be clear, I have not registered my email address with HSBC by the method HSBC had laid out, or for that fact any other method. I did not sign their utterly pointless and insecure method of such registration, that being the return of a signed form. One of the reasons that I didn't return their pointless form, is that HSBC should not be unlawfully processing a copy of my signature from 26 years prior and 23 years after account closure and of course they shouldn't be sending such forms to unverified geographical addresses (unverified being HSBC position)."*

I do note that HSBC had previously, in relation to data protection matters corresponded with Mr C by email, although my attention has been drawn to his SAR in November 2020 (this evidence was considered by the previous Ombudsman) where he said that he was unable to deal with information supplied electronically and required HSBC's response to be printed on A4 paper. So it does appear that Mr C has been inconsistent in whether he wished to correspond by email or by post.

HSBC says that Mr C does not have an email address registered on its system. and I reiterate that because of the sensitivity of this matter regarding Mr C's personal data, I think that asking him to register his email address is fair and reasonable. And I note Mr C's objections to its process for registering such an email. Nonetheless emails, which could be sent or received by anybody with access to the relevant account, are not secure in the way that sending a letter to a postal address might be. HSBC has sent Mr C a form for completion. If he is not happy with that then he could ask HSBC whether he could do this by visiting the branch with photo ID. But I won't require HSBC to correspond with Mr C by email when it hasn't had the chance to verify.

### **My final decision**

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 April 2024.

Ray Lawley  
**Ombudsman**