

The complaint

Mr A is unhappy that HSBC UK Bank Plc allowed an energy company to reinstate a direct debit after he had cancelled it with HSBC.

What happened

Mr A has severe mental difficulties and is classed as a vulnerable customer. Mr A called HSBC and asked them to cancel a direct debit that was set up to allow an energy company to take payments from his account. HSBC cancelled the direct debit, but the energy company reinstated the direct debit with HSBC shortly afterwards. This enabled the energy company to take several monthly payments from Mr A's HSBC account which Mr A hadn't authorised. Mr A wasn't happy about this, so he raised a complaint.

HSBC responded to Mr A and explained that their agent had cancelled the direct debit with the energy company as he'd requested, but that the energy company had later reinstated the direct debit instruction with HSBC, which the energy company was entitled to do. However, HSBC acknowledged that their agent hadn't noted Mr A's vulnerability on HSBC's systems, which would have prevented the energy company from reinstating the direct debit instruction without Mr A's consent.

HSBC apologised to Mr A for not correctly recording his vulnerability and made a payment of £50 to him as compensation for any trouble or upset he may have incurred as a result. HSBC also raised an indemnity claim with the energy company to try to recover the several months of direct debit payments that Mr A was unhappy about. However, that indemnity claim was rejected by the energy company, who maintained that it had taken money that was legitimately owed to them by Mr A. Mr A wasn't satisfied with HSBC's response, so he referred his complaint to this service.

One of our investigators looked at this complaint. During their review, HSBC reassessed their position on this complaint and offered to pay a further £100 compensation to Mr A and to reimburse charges totalling £19.05 that Mr A had incurred on his account. Our investigator felt that HSBC's revised offer represented a fair outcome to what had happened. But Mr A disagreed and felt that HSBC should be instructed to reimburse the direct debit payments that the energy company had unfairly been allowed to collect. So, the matter was escalated to an ombudsman for a final decision.

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 don't dispute that their agent didn't record Mr A's vulnerable customer status on their systems as she should have done. And it seems apparent that if HSBC's agent had correctly noted Mr A's vulnerable customer status, that this would have resulted in a flag being placed on Mr A's account that would have prevented the energy company from reinstating the direct debit without HSBC first obtaining the consent of Mr A to allow it to do so – which I feel it's reasonable to assume wouldn't have been given by Mr A.

However, even in acknowledgement of the above, as an impartial party I don't feel that it would be a fair outcome here to instruct HSBC to reimburse the several months of direct debit payments that were taken by the energy company after they reinstated the direct debit instruction as Mr A would like. And this is because, ultimately, I feel that there were several opportunities for Mr A and those who assist him with the management of his HSBC account to have mitigated against what happened here and to have prevented the energy company taking the direct debit payments in question.

Mr A has explained to this service that he has severe mental difficulties, and I'm very mindful of this when considering this complaint. But I've listened to a recording of the telephone call between Mr A and HSBC when Mr A asked to cancel the direct debit instruction. And it's notable on this call that HSBC's agent clearly tells Mr A that he will need to contact the energy company to let them know that the direct debit has been cancelled, and that Mr A confirms on two occasions that he will call the energy company after speaking with HSBC.

What should have happened during this call is that HSBC's agent should have more clearly explained to Mr A that while HSBC could cancel the direct debit instruction, that the energy company could reinstate that instruction – unless Mr A called the energy company and cancelled the direct debit instruction directly with them. But while HSBC's agent alluded to this and did explain to Mr A that he needed to call the energy company after speaking with HSBC, I don't feel that she was sufficiently clear that the energy company would be able to reinstate the direct debit with HSBC if Mr A didn't call them.

However, as explained, Mr A did tell HSBC's agent on two occasions that he would contact the energy company and tell them that he'd cancelled the direct debit with HSBC. And I feel that it may have been the case that HSBC's agent didn't explain why Mr A needed to call the energy company because he'd already told her that he would call them.

If Mr A had called the energy company, as he'd said he would, then I feel that it's highly likely that this complaint would never have arisen. I say this because it seems clear that the energy company believe they have taken the disputed direct debit payments legitimately – given that they rejected the indemnity claim that HSBC raised on that basis. And so, I feel that had Mr A contacted the energy company and insisted that they cancel the direct debit instruction with HSBC, that he would in all likelihood have entered a dispute with the energy company themselves at that time – because the energy company believe that Mr A owes them the money in question here.

Additionally, it's also notable that at the start of the call between Mr A and HSBC, that Mr A gave a detailed description of the payments that had been taken from the account by the energy company that he was unhappy with, and why he was unhappy with them.

Later during that phone call, Mr A explained to HSBC's agent that he can't read and that his wife reviews his account statements for him. But as the account holder, it's Mr A's responsibility to be aware of the ongoing position of his account, even if Mr A needs to seek assistance from trusted third-parties such as his wife to achieve this.

I feel the fact that Mr A was clearly able to understand and explain to HSBC his dissatisfaction with the energy company and the payments they'd taken from his account means that he was able to gain an understanding of the state of his account at that time – presumably with the help of his wife. And I also feel that Mr A could and reasonably should have continued to monitor his account in a similar manner moving forwards.

Had Mr A continued to monitor the ongoing status of his account, with whatever assistance he needed, then he would have noticed the reinstatement of the direct debit by the energy company when it first happened. And I feel that this reasonably should have resulted in Mr A

contacting HSBC about the direct debit after the first payment after the reinstatement was taken by the energy company – rather than after several months of payments, as was the case here.

Ultimately, while HSBC did make a mistake here in not correctly recording his status as a vulnerable customer on their systems, I feel that Mr A not calling the energy company after speaking with HSBC as he said he would do, and not then monitoring his account (with assistance) are themselves significant factors in what's happened.

Also, as alluded to above, I feel that what would have happened, had HSBC recorded Mr A as being a vulnerable customer, is that Mr A would have entered into a dispute with the energy company. This is because the energy company would have requested the reinstatement of the direct debit, which HSBC would have sought Mr A's consent to do. And, with Mr A not giving that consent, the energy company would in all likelihood have contacted Mr A directly about the money they felt he owed them.

Accordingly, I feel that it's fair that if Mr A wants to recover the money that he feels the energy company have taken from him that they shouldn't have, this is a dispute that Mr A should engage in with the energy company directly. And while I feel that HSBC should compensate Mr A for not prompting this dispute with the energy company at an earlier time – as I feel would have happened – I don't feel that HSBC should fairly be instructed to reimburse the money to Mr A that the energy company maintains was fairly owed to them. And this is especially the case given that Mr A himself could and reasonably should have acted to prevent the energy company taking that money from HSBC, as discussed above.

HSBC have made a payment of £50 to Mr A as compensation for the trouble and upset he's incurred here, and they've offered to pay a further £100 compensation and to reimburse account charges totalling £19.05. This seems fair to me, given the impact of these events on Mr A and given that I feel that Mr A could have mitigated against that impact. And in arriving at this position, I've also considered the general framework this service uses when assessing compensation amounts – details of which are on this service's website.

Finally, while HSBC has accepted that it provided Mr A with poor service by not recording his vulnerability, Mr A doesn't see it that way. He feels that what HSBC have done goes beyond poor service and feels that HSBC have discriminated against him. Our service is an informal alternative to the Courts, as such, we don't have the power to make a finding of discrimination under the Equality Act 2010. Should Mr A want such a finding, he would need to obtain one via a Court of Law. However, we do take relevant regulations and legislation into account when determining how a complaint should be resolved.

Taking Mr A's feelings in this regard into account, I've had to decide if I feel that HSBC have treated Mr A unfairly. HSBC have accepted that while their agent did offer to record Mr A's additional needs on HSBC's systems, they didn't discuss this option with Mr A in as much detail as they should have done, so that Mr A was fully aware of the options available to him and how it be of benefit to him. This doesn't feel fair to me, but I feel that HSBC have fairly addressed this point with the offer of further compensation that they've made.

HSBC have also confirmed that an additional needs marker was applied to Mr A's profile when Mr A raised his complaint with them. And HSBC have reiterated that they feel that, ultimately, Mr A has a dispute with the energy company itself here regarding the direct debit payments which he is unhappy with – and as explained above, I'm in agreement with HSBC in this regard.

Finally, Mr A feels that he was given a false sense of hope regarding how his finances would be looked after by HSBC. But returning to the recorded phone call that I've listened to I don't

feel that this was the case. Rather, as discussed above, I feel that Mr A demonstrated that he did understand the status of his account, and that he also understood that he would need to call the energy company to cancel the direct debit with them directly.

All of which means that I feel that HSBC's offer to pay additional compensation and reimburse charges does represent a fair outcome here. So, while I will be upholding this complaint in Mr A's favour, I'll only be doing so to instruct HSBC to pay the further £100 compensation and £19.05 charges reimbursement that they've already offered to pay. And I won't be instructing HSBC to take any further action beyond this.

I realise this won't be the outcome Mr A was wanting. But I hope he'll understand, given what I've explained, why I've made the final decision that I have.

Putting things right

HSBC must make payments totalling £119.05 to Mr A.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 June 2024.

Paul Cooper
Ombudsman