

The complaint

H complains about a direct debit was collected from its account despite cancelling the instruction. H also complains that HSBC declined its refund request made under the direct debit indemnity scheme.

What happened

H had an existing contract with a business I'll refer to as O to supply equipment and services. The original contract was taken out in 2019. H's director, Mr M, has explained that they became concerned that O wasn't charging the correct amount for the services provided so took the step of cancelling the direct debit instruction with HSBC in October 2022.

O used the direct debit mandate Mr M completed on H's behalf in March 2022 to set up a new instruction and took a payment of £399.30 on 1 March 2023. Mr M raised a claim under the direct debit indemnity scheme that successfully resulted in the payment being refunded to H's account. Mr M cancelled the direct debit instruction again with HSBC.

On 1 August 2023 O collected another direct debit payment, this time for £3,409.49. Mr M's explained that H received no advance notice of the direct debit payment O intended to collect. Mr M raised another direct debit indemnity claim with HSBC and on 1 September 2023 it provided a temporary refund of £3,409.21. HSBC went on to process the indemnity claim and contacted O.

O defended the claim and sent HSBC a copy of H's direct debit mandate dated March 2022 and a copy of its contract to provide services to from 2019. O also provided a copy of a notice it says was sent to H on 11 July 2023 to notify it of the payment it intended to collect on 1 August 2023. Evidence from the AUDDIS system (an automated system used to set up direct debits) that showed it had set up a new payment instruction before debiting H's account was also provided.

On 11 October 2023 HSBC reversed the refund. Mr M has explained this placed H's account in a negative balance. Mr M complained on H's behalf and it issued a final response on 17 October 2023. HSBC didn't agree it had made a mistake by taking back the direct debit refund as O had defended the claim. But HSBC offered H £150 for the inconvenience caused.

Mr M went on to refer H's complaint to this service and it was passed to an investigator. They didn't think HSBC had made mistakes in the way it considered H's direct debit indemnity claim and didn't ask it to take any further action. Mr M asked to appeal H's complaint and provided evidence that O had subsequently accepted the payment was taken in error. O agreed to place the payment on account as a credit but didn't offer to refund it to H. Mr M reiterated his view that H's payment should've been refunded under the direct debit indemnity scheme as it was taken in error. As Mr M asked to appeal H's complaint, it's been passed to me to make a 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.

I can understand why Mr M remains unhappy that the payment taken by O in August 2024 using the direct debit instruction he completed in March 2022 wasn't refunded. Mr M has provided copies of emails from O where it confirms a mistake was made and H was overcharged. But in this decision, I'm looking at how HSBC handled the direct debit indemnity claim Mr M made on H's behalf and whether it acted fairly by taking back the temporary refund it applied.

The direct debit guarantee says that if an error is made in the payment by either the claiming business or bank, the customer is entitled to a full refund of the amount paid. It goes on to confirm the refund can be taken back if it's deemed the claimant isn't entitled to it.

In this case, Mr M completed a direct debit mandate in March 2022. O used that mandate to set up the new payment instruction before claiming the payment on 1 August 2023. HSBC has provided evidence the instruction was received via AUDDIS which meant it didn't have sight of the original mandate itself. HSBC only knew that a business used the AUDDIS system to set up a new direct debit payment.

The direct debit guarantee says a business has to give its customer advance notice of the intended payment. O provided a copy of a letter it claims was sent to H on 11 July 2023 providing advance notice of the payment it intended to take. Mr M has told us he didn't receive this letter. But it's correctly addressed and I'm satisfied HSBC reasonably accepted it as evidence advance notice was provided to H.

The guarantee says payments can be refunded if it's found a mistake was made by either the collecting business or bank. But here, O defended the payment at the time the direct debit indemnity claim was raised and confirmed the correct process was followed. From HSBC's perspective, I think it reasonably accepted what O told it at the time. There was evidence of a contract to provide products and services between H and O. And a direct debit mandate that allowed O to debit H's account for those services. In addition, O provided a copy of its notice to H dated 11 July 2023 that it intended to debit its account by £3,409.49 on 1 August 2023. Taking all that information together, I'm satisfied that at the time of considering H's direct debit indemnity claim, HSBC acted reasonably by accepting the defence O provided on the basis the payment was correctly processed. I'm very sorry to disappoint Mr M, but I haven't been persuaded HSBC acted unfairly by declining H's claim based on the information it obtained.

I'm not saying the payment O collected was correctly charged. O's own emails confirm the payment wasn't actually due after it considered further representations made by Mr M on H's behalf. But by that point, the claim had already been considered, declined and closed. And O didn't go on to offer a refund to H which would've returned the payment to its account. Ultimately, whilst I understand Mr M will likely find this unsatisfactory, H has the option of taking alternative steps, like legal action, to recover the payment. But, for the reasons I've noted above, I'm unable to agree that HSBC made a mistake or acted unfairly when it declined the direct debit indemnity claim Mr M raised on H's behalf. As a result, I haven't been persuaded to uphold H's complaint.

My final decision

My decision is that I don't uphold H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 15 July 2024.

Marco Manente
Ombudsman