

The complaint

Miss T complains about how HSBC UK Bank Plc dealt with a claim she made in relation to direct debit payments and the impact this had on her.

What happened

Miss T raised a claim under the Direct Debit Guarantee with HSBC. It accepted this and refunded the relevant payments while it investigated the circumstances of the claim in more detail. The company that claimed the payments through the direct debit challenged the claim and this meant that HSBC then debited the payments from Miss T's account again. As a result, Miss T was placed into an unarranged overdraft which she says caused her a significant amount of distress, upset and inconvenience – including forcing her to borrow money from an unregulated lender.

Miss T complained to HSBC which admitted that it shouldn't have raised this claim through the Direct Debit Guarantee as it ultimately wasn't correct to do so, given the nature of the claim. It paid Miss T £100 for the inconvenience this caused, but didn't take any further action as it felt that it was clear that the payments could be debited from the account later.

Miss T was unhappy with this and brought her complaint to this service where one of our investigators looked into it. They considered what Miss T said about the impact this situation had on her, but said that they didn't have sufficient evidence to support that it'd be fair to expect HSBC to accept responsibility for the debt Miss T took out with the unregulated lender.

Our investigator noted that there were transfers to other accounts in Miss T's name on her bank statements and we didn't have any statements to show a full picture of the financial situation Miss T was in. They felt that based on the evidence they had, that HSBC had paid fair compensation – noting that HSBC had also paid Miss T £400 from a family member that she couldn't access because it was paid to the unarranged overdraft, along with a further £250 compensation in addition to the £100 for her distress and inconvenience.

Miss T disagreed with the investigator and asked for an ombudsman's decision. She said that her financial situation should be clear from the information we already had which showed that she received benefits and regular payments from a family member.

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.

The starting point here is that HSBC has acknowledged that it made a mistake in how it dealt with Miss T's claim under the Direct Debit Guarantee. It shouldn't have treated this as a valid claim under the guarantee because of the nature of the dispute that Miss T raised. So it's clear it made a mistake here – what I need to decide is what is fair and reasonable to put that right and whether HSBC need do any more than it already has.

I've seen that the nature of the Direct Debit Guarantee claim was made clear to Miss T when she raised this. HSBC clearly explained that it could debit the funds after a full investigation had taken place. It shouldn't have raised the claim in the first place, but it did also let Miss T know that the funds could be taken back at any time – which is ultimately what happened.

That said, I can see why Miss T used the funds as she did, given what she's told us about her financial position and personal circumstances. She accepted what HSBC said in good faith and proceeded on the basis that those funds were now available to her. So it must have been very troubling to discover that the money had been debited after she spent it.

However, even with this in mind – I don't think this means that HSBC needs to pay Miss T the amount it re-debited from her account. I think HSBC was always entitled to re-debit this, because it shouldn't have credited this to her in the first place. Debiting the amount was in essence correcting its mistake. The problem with this was the impact it had on Miss T in her very individual circumstances.

The starting point for that is that HSBC should recognise the distress and inconvenience its mistake caused Miss T. It first awarded her £100 for this but then paid another £250 on a different complaint reference (albeit for the impact of the same situation). That brings the total paid here to £350 for the distress and inconvenience caused which I think is fair to reflect the serious impact this had on Miss T.

There was also an issue whereby a family member transferred Miss T some money for living expenses but she couldn't access the money. This was because it was used to credit the balance that was owed after the direct debit claim was reversed. I was pleased to see that HSBC paid her this itself as compensation though – which was a helpful gesture in the circumstances. I'd add that HSBC would have been entitled to use that money to reduce what it was owed, but it chose not to here – which I think was fair and reasonable.

This leaves the further impact that Miss T has referred to where she says that because of HSBC's mistake, she was forced to take out lending with an unregulated lender. I've carefully considered all Miss T has said about this and the evidence (including the phone messages) she's sent us. But having done so, I'm not persuaded that it'd be fair to hold HSBC liable for Miss T's choice to borrow money in this way.

I don't doubt that Miss T felt backed into a corner and that she believed that mainstream lenders wouldn't lend to her because of her credit score. But I have to be fair to HSBC too. To fairly hold it liable for Miss T's choice to do that here, I'd have to be persuaded that this was a foreseeable consequence of the mistake and that there is sufficient evidence that were it not for HSBC's error that this situation wouldn't have arisen.

But the evidence here doesn't persuade me of that. I haven't for example seen that Miss T made any applications at all with regulated lenders before approaching the unregulated person she did. While I accept that her credit score may be poor, there are still lenders that may consider applications from customers with lower credit scores. In any event, I don't think I can fairly say that HSBC could have reasonably known this was an action Miss T would take as a result of its mistake.

Further to this, I note that Miss T has accounts other than this one with other banks which she hasn't provided evidence of or information about. While we have made requests to these businesses ourselves, only one business has responded and the information is inconclusive, only showing some payments into one account that are then transferred out. Like our investigator, I don't think we have a sufficiently full picture of Miss T's finances here to say that HSBC can solely be held liable for her decision to use an unregulated lender.

But that doesn't change the fact that HSBC clearly made a mistake here and that it had a significant impact on Miss T. But it has paid £350 for the distress and inconvenience caused and £400 of funds that she couldn't access. I've carefully considered all that Miss T has said about her circumstances and the impact this had, but I think what HSBC has paid here is fair and reasonable to resolve her complaint. As these amounts have already been paid there are no further actions I will be telling HSBC to take.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 23 October 2024.

James Staples
Ombudsman