

The complaint

Mr K is unhappy that HSBC UK Bank Plc, trading as first direct (“FD”), sent him a marketing communication when he’d opted out of receiving marketing communications.

What happened

Mr K raised a complaint with FD because he’d received a marketing communication, having previously opted out of receiving such communications. Mr K was also unhappy that FD had shared his information with the third-party that had sent the marketing communication.

FD responded to Mr K and explained that the email he’d received had been a survey asking for feedback on the service he’d received from FD and wasn’t a marketing communication.

FD also said that they didn’t feel they’d acted out of accordance with their terms or their privacy statement by having this survey sent to Mr K but confirmed that they’d updated his preferences so that no further surveys would be received by him. Mr K wasn’t satisfied with FD’s response, so he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn’t feel FD had acted unfairly in how they’d managed the situation and so didn’t uphold the complaint. Mr K remained dissatisfied, 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.

Having done so, I’m satisfied that the survey email that FD sent to Mr K wasn’t a marketing communication and so wasn’t covered by Mr K’s opt out of receiving marketing communications. This is because the survey email was requesting feedback from Mr K about his experiences with FD, and wasn’t marketing any new or existing products to Mr K.

I can appreciate that Mr K might not have wanted to have received the survey email that he did receive. But to reiterate, I’m satisfied that by opting out of receiving marketing communications, Mr K had specifically only opted out of receiving marketing communications. And that because the survey email wasn’t a marketing communication, that his opt out of receiving marketing communications wasn’t relevant to his receipt of the survey email – given that it was not a marketing communication.

I’ve also reviewed FD’s terms and conditions and their privacy statement, and having done so I don’t feel that FD have acted out of accordance with those documents by having the survey email sent to Mr K as they did.

Moving forwards, FD have confirmed that they’ve updated Mr K’s preferences so that he won’t receive any survey emails from now on. This seems fair to me, and I can only confirm again that I’m satisfied that Mr K’s receipt of the survey email about which he complains wasn’t prohibited by Mr K opting out of receiving marketing communications – because the

survey email wasn't a marketing communication.

I also confirm that I'm satisfied that by opting out of marketing communications, Mr K hadn't opted out of received all communications, but only marketing communications.

All of which means that I don't feel that FD have acted unfairly towards Mr K as he contends here, and that therefore I won't be upholding this complaint. I realise this won't be the outcome Mr K was wanting, but I hope that he'll understand, given what I've explained, why I've made the final decision that I have.

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 Mr K to accept or reject my decision before 25 October 2024.

Paul Cooper
Ombudsman