

The complaint

Mrs T complains that HSBC UK Bank PLC failed to refund fraudulent transactions on her account and these transactions have led to her going into an overdraft with interest and charges.

What happened

In September 2021 four payments were made from Mrs T's account that she says she didn't authorise. She raised a complaint to HSBC. A final response letter (FRL) was sent by HSBC via e-mail on 04 April 2022 to the same e-mail address Mrs T has provided to this service. Within that FRL, HSBC said it wasn't going to refund the four transactions and that Mrs T had 6 months to bring that complaint to this service.

In April 2024 Mrs T contacted HSBC to make a complaint about interest and charges she had incurred as a result of being in her overdraft. HSBC reviewed that complaint and issued an FRL on 31 May 2024 with a gesture of goodwill payment of £100 for the affect the complaint had had on Mrs T.

Mrs T then brought her complaint to this service on 04 June 2024. Within her complaint she made the following points;

1. That HSBC had held liable for the disputed transactions
2. HSBC's system not detecting the disputed transactions
3. HSBC holding her liable for the interest due on those disputed transactions that left her in an overdraft
4. The service she received from HSBC when raising a complaint in 2024.

Our investigator said Mrs T hadn't brought her complaint about points 1 and 2 in time because it had been raised with us more than six months after HSBC issued its FRL in relation to those complaint points. Our Investigator was also not persuaded there were any exceptional circumstances which prevented Mrs T from referring her case in time. So, he didn't think the Financial Ombudsman Service could consider Mrs T's complaint in relation to points 1 and 2.

The investigator said this service could investigate points 3 and 4 but didn't think they should be upheld. He said because he was unable to investigate whether the disputed transactions should fairly be refunded by HSBC, he couldn't say that HSBC had unfairly added interest and charges to these as a result of Mrs T being in her overdraft. And that HSBC had offered £100 for the service it provided when reviewing Mrs T's 2024 complaint which he felt was reasonable in the circumstances.

Mrs T disagreed and asked for an Ombudsman's review. She said that there were exceptional circumstances as to why she'd referred her complaint after the six-month time limit. She said she suffered from long-covid which caused brain fog and severe fatigue. She had also just divorced so was working long hours away from home at times.

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 agree with the investigator and for similar reasons. Complaint points 1 and 2 have been brought to this service out of time. And I'm not satisfied complaint points 3 and 4 should be upheld.

Why I can't look into points 1 and 2

I've considered the information Mrs T has given to us to decide whether we can consider points 1 and 2 from her complaint. Having done so, I've concluded I don't have the power to deal with them.

Firstly, I should make it clear I haven't considered the merits of these complaint points – this part of the decision relates only to whether we're able to look at points 1 and 2 Mrs T has raised. I've carefully considered all the evidence provided, but if I don't mention a particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important in deciding if we can consider Mrs T's complaint.

I don't have a free hand to decide complaints. I must act within my powers which are set out by the Financial Services and Markets Act 2000 along with the FCA Dispute Resolution (DISP) Rules. I can't simply disregard these rules, no matter how strongly a customer feels things have gone wrong. The rules can be found on the FCA's website.

DISP Rule 2.8 says that I can't consider a complaint if it's brought to the Financial Ombudsman Service more than six months after the date the business sent its FRL to the consumer.

HSBC issued a valid FRL to Mrs T giving clear information about the right to bring her complaint to the Financial Ombudsman Service within six months of the date of the letter. The FRL was dated 04 April 2022 via e-mail. This meant Mrs T had until 04 October 2022 to refer the complaint to us.

Our records show Mrs T didn't contact the Financial Ombudsman Service until 03 June 2024. So, under the DISP Rules, this complaint was referred out of time as it was more than six months after HSBC sent its FRL.

A business is entitled to object to our considering a complaint if it's made too late. HSBC has done that here and it isn't required to give any reasons for this.

Under the rules, the Financial Ombudsman Service can investigate complaints made outside of the usual time limits if we're satisfied that the lateness was due to '*exceptional circumstances*' which prevented a consumer from complaining in time. An example is given in the DISP Rules where the complainant has been or is incapacitated.

I've then gone on to consider very carefully the circumstances Mrs T has described and the evidence she has shared. I have to decide whether they are exceptional and would've prevented her from bringing a complaint to us. DISP 2.8.4 sets out that an example of exceptional circumstances might be where the complainant has been or is incapacitated.

Mrs T has provided a lot of evidence of her medical history. And there is no doubt Mrs T was experiencing long-covid following her divorce. However, I note she was referred by a Doctor for long-covid in May 2021. I appreciate this takes a long time to recover from, and whilst I

have great sympathy for Mrs T's health condition and what she went through, I haven't seen persuasive evidence to suggest she was incapacitated and couldn't have brought her complaints to us within the 6-month timescales outlined in the FRL. Particularly as we can be contacted on-line or by a single telephone call, email, or letter. I also note, as did the investigator, that Mrs T was working in April 2022.

I know this will come as a disappointment to Mrs T. But I should stress this decision isn't about the merits of points 1 and 2 here. It's about whether we can look at that part of her complaint, and in the circumstances of this case I'm satisfied we can't.

Points 3 and 4

I've carefully considered the merits of points 3 and 4. Having done so, I'm not willing to ask HSBC to do anything more here.

Mrs T has asked HSBC to stop charging her interest on payments she didn't authorise. But I'm afraid because I'm unable to say whether HSBC correctly or incorrectly held Mrs T liable for the disputed payments she says are causing interest and charges I can't find that HSBC has treated her unfairly in relation to them. The ability to add charges and interest to an overdraft is outlined within the terms and conditions of Mrs T's account. So, I can't say that Mrs T is being treated unfairly here.

Mrs T is unhappy with the service she received here. I've seen the communication she had with HSBC at the time she made her complaint in April and May 2024. Having done so, I don't think HSBC treated her unfairly here. I appreciate that this complaint has taken a toll on Mrs T and has caused her a lot of stress from her correspondence with this service. But it seems that the main perpetrator of that stress is the disputed transactions (which I can't consider here). And it seems that HSBC took into account the stress and the affect this situation has had on Mrs T when it made a £100 gesture of goodwill. So, I'm not going to uphold complaint points 3 and 4.

As a result of the above, I'm not going to ask HSBC to take any further action here.

My final decision

My final decision is that I don't uphold complaint points 3 and 4.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 20 December 2024.

Mark Dobson
Ombudsman