

## The complaint

Mr N is unhappy with how he has been treated by HSBC UK Bank Plc in relation to his business bank account.

He believes that HSBC ought to have handled things differently after he notified it that he was experiencing financial difficulties in 2012. Mr N is also unhappy with how he was treated in relation to the Safeguarding review of the account in 2019.

## What happened

In 2012, Mr N notified HSBC that his business was experiencing financial difficulties. The account remained open and was subject to the standard terms and conditions, including associated fees and charges. HSBC agreed to a number of temporary arrangements, which included some fees and charges being waived.

In December 2017, Mr N complained to HSBC that, some five years after he'd first notified it of financial difficulties, no repayment plan had been agreed in relation to the account. He felt that HSBC hadn't helped him in the way that he had hoped and as it should.

HSBC didn't uphold the complaint. It said it had done its best to assist Mr N, working with his level of affordability. Mr N referred the complaint to this Service.

An Ombudsman here issued a final decision in April 2018. He said, in summary, that:

- He'd looked carefully at the notes of Mr N's contact with HSBC over the previous six years and his bank statements. He could see that HSBC had collected information about his income and expenditure and there had never been a point where Mr N had shown a clear surplus. This was the reason why HSBC had said it hadn't agreed any long term plan as it had no evidence that one would be sustainable.
- He noted that Mr N had said that HSBC should have issued a default several years prior. He could see from case notes that Mr L had told HSBC at a number of different points between 2012 and 2017 that, for different reasons, he expected his business' prospects to improve.
- He considered that HSBC had provided long periods of breathing space for Mr N and refunded a significant amount of interest and charges. He thought it likely HSBC had done this because it was what Mr N had wanted. He doubted Mr N had really wanted a default to be recorded, even if with hindsight he was now saying that may have been a better option.
- He wouldn't be able to tell HSBC to freeze interest and charges permanently. He'd expect HSBC to work with Mr N to try to agree a plan. But, he suspected the only way Mr N would be able to resolve things, would be if the account was passed to recoveries.
- Taking everything into account, he wasn't persuaded that HSBC had acted unfairly.

Shortly after, Mr N complained about HSBC passing the account to recoveries. An investigator here said they didn't think HSBC had acted unfairly.

In March 2019, Mr N complained again to HSBC. He continued to be unhappy with how HSBC had treated him since 2012 and that it was still continuing to levy charges and interest.

HSBC issued a final response letter not upholding the complaint. It said that the fees and charges applied were in line with the terms and conditions of the account. However, it refunded some interest as a gesture of goodwill. It suggested that Mr N contact the financial hardship team to discuss his situation and any ways in which it might be able to assist.

In June 2019, Mr N complained that HSBC was refusing to arrange a repayment plan, without first issuing a default. In July 2019, Mr N complained that HSBC hadn't offered a suitable repayment plan when he notified it of his financial difficulties back in 2012. He said that HSBC had basically blackmailed him into keeping the account active, as if the business was still trading, which it wasn't.

Mr N said the correct procedure would have been to close the account at the time and agree a repayment plan. He acknowledged that this would have had an effect on his credit file, but said that by this point in time, his credit file would have been restored and the outstanding balance cleared. He said that the actions of the financial guidance team to only offer short term solutions over the years, hadn't been fair or reasonable.

HSBC issued another final response letter. It said that its records showed Mr N had previously complained about the issue and taken it to this Service in 2018. And that as the Ombudsman had already reviewed the matter, HSBC wouldn't review it again. As a gesture of goodwill it refunded another £105 of fees.

Mr N remained unhappy. He cited a telephone conversation in which he said that a representative of HSBC had admitted that an income and expenditure form was requested and had been provided by himself to the bank in 2012 and that nothing was actioned. And that HSBC had been aware in 2012 that his business had stopped trading.

Mr N said that not only was this the first time HSBC had confirmed these things, but it also showed that it was aware of his financial difficulties in 2012 and did nothing to help at the time or since. He also said that the Ombudsman wouldn't have been aware of this when making his decision in 2018.

HSBC issued another final response letter. It said that it had considered Mr N's income and expenditure in 2012 and had call notes to show when a conversation had taken place and what had been discussed. HSBC re-iterated that as this Service had already looked into the matter, HSBC wouldn't be revisiting it.

Mr N also raised concerns about how he was being treated by HSBC in relation to its Safeguarding review. He said he'd been promised contact from someone about this but this hadn't happened. He also said that HSBC saying in a letter that it was going to close his account following the review, wasn't fair in the context of his broader concerns about what had happened.

In December 2019, HSBC wrote to Mr N to advise him that his access to the account and related services, had been withdrawn.

HSBC issued another final response letter. It upheld Mr N's complaint in respect of someone not contacting him about the Safeguarding review, when he had been expecting someone to get in touch. As an apology, it offered him £75. However, it maintained its decision to close the account.

Mr N remained unhappy and asked us to consider his complaint.

An investigator looked into things and reached a view in October 2021. He said, in summary, that:

- Mr N's concerns about how HSBC had treated him after his business experienced financial difficulties in 2012, had already been considered by this Service. As an Ombudsman had already issued a final decision on the complaint, it would be unfair to HSBC for these things to be considered again.
- In respect of the Safeguarding review, he didn't think HSBC was acting maliciously or that it had done anything wrong by carrying out the review. He thought it was reasonable to expect financial institutions such as HSBC to have security measures and systems in place to protect customers and itself from fraud.
- HSBC was entitled, following the review, to decide to close the account.

Mr N didn't agree with the investigator's findings. He said that when he first contacted this Service in early 2020, someone had checked with a manager and told him that we would be able to look at the issue of how he had been treated since 2012. After the investigator's view remained unchanged, Mr N raised concerns about how he had been treated by this Service. His concerns were investigated and responded to by another Manager. The complaint about our Service is entirely separate from this decision.

Before the case was passed to me, Mr N provided some further comments. Much of what he wrote was a reiteration of things he'd previously said. However, he also said, in summary, that:

- As he had been unable to maintain the account after his business experienced financial difficulties, he had broken the terms of the contract. The account should've closed and a long term payment plan or final settlement should legally have been offered to him, but wasn't. As such, HSBC broke several rules set out in the FCA Handbook.
- When bringing the complaint to this Service in 2018, the investigator didn't try to speak to him, preventing him from fully explaining his side, which led to a very fast and opined response. The complaint was not fairly reviewed, correctly or lawfully in parts.
- The investigator in 2018 claimed that HSBC had carried out regular income and expenditure reviews, however this was not the case and was speculative and not based on evidence. The investigator's opinion that a payment plan was never offered because he couldn't afford one was an outrageous statement.
- No evidence was provided to him, despite being requested several times.

- The final response letter which covered the issue of an HSBC representative having said they couldn't find the evidence of an income and expenditure assessment on file, gave him the rights to refer the complaint to this Service.
- Based on the agreement to proceed given by members of this Service's staff in 2020, he asks that he be given the right for the matter to be fully investigated in line with the points he raised at the time.

After looking at the file, I asked HSBC for some further information. I asked for:

- A copy of the relevant terms and conditions it had referred to in the context of its decision to close the account, with the relevant notice period.
- Clarification on how and why the account was 'selected' for a Safeguarding review when it was. And why it wasn't selected earlier – given that HSBC was aware for some time that Mr N hadn't been trading. And something to show or explain how Mr N and his account had been treated the same way as any other in a similar position.
- Clarification of the status of the account.

HSBC provided a copy of the relevant terms and conditions. It also said that the Safeguarding reviews were system generated. And that the account was still open, due to the outstanding debt on the account.

I issued a provisional decision in February 2022 where I said that we shouldn't consider the part of the complaint about how Mr N had been treated by HSBC since 2012, because another Ombudsman had already issued a final decision on the matter, in 2018. And that in terms of how Mr N had been treated by HSBC in relation to the Safeguarding review, I thought HSBC had already done enough to put things right. Below is an extract from my provisional decision.

*Much of Mr N's complaint revolves around how he has been treated by HSBC since he notified it of his business' financial difficulties in 2012. So, I've first thought about whether it is appropriate for me to consider these concerns.*

*Mr N argues that I should consider the issues he'd raised, on the following grounds:*

- *The investigation carried out in 2018 was flawed*
- *New information has come to light about HSBC not doing what it should in relation to income and expenditure information that he provided in 2012*
- *HSBC issued a final response letter giving him the right to bring a new complaint about the issue.*
- *He was told by members of staff at this Service (who had checked with a manager), that we would be able to look at things again.*

*The rules under which the Financial Ombudsman Service operates, are contained in the Financial Conduct Authority's Handbook. These rules set out the scenarios in which the Ombudsman may dismiss a complaint without considering its merits. The relevant one, DISP 3.3.4A R, says:*

*The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on*

or after 9 July 2015 without considering its merits if the Ombudsman considers that:

*(5) Dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.*

and DISP 3.3.4B G goes on to say:

*Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include:*

*(3) Where the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant)....*

So, I've thought about these considerations in turn.

*Have the issues Mr N is raising, been previously considered under the Financial Ombudsman Service?*

*I've considered the final decision issued by the Ombudsman in April 2018 alongside the issues raised by Mr N in this complaint. And I have come to the conclusion that apart from the concerns relating to the Safeguarding review (which I will comment on later in this decision), the complaint being brought by Mr N now, is fundamentally the same as the complaint that was brought in 2018.*

*I say this because the Ombudsman's decision in 2018 focuses on how Mr N was treated by HSBC from the point he notified it of his business' financial difficulties in 2012, up to the point that Mr N raised his complaint in 2018. The Ombudsman makes a finding on the reasonableness of the actions taken by HSBC. The same actions that Mr N is now complaining about.*

*Has any material new evidence subsequently become available to Mr N?*

*Mr N says that HSBC has, since the final decision was issued in 2018, admitted that it didn't do anything with an income and expenditure assessment he provided in 2012. And that this shows it didn't treat him fairly at the time.*

*However, HSBC says this isn't the case and that its records show that income and expenditure information was received in 2012 and that there was a telephone conversation with Mr N about the information, at the time.*

*I can see that the Ombudsman's decision in 2018 specifically refers to notes showing that HSBC had collected information about Mr N's income and expenditure. And that when it supplied its file in 2018, this included a file attachment titled "IEX notes 17-09-2012.pdf". Based on this, I'm satisfied there isn't any material new evidence that has become available to Mr N since he brought the complaint in 2018.*

*It follows that Mr N's concerns about how HSBC has treated him since his business experienced financial difficulties in 2012, is not something I should consider. And re-visiting issues which have already been considered by this Service would seriously impair the effective operation of the Financial Ombudsman Service.*

*I have noted and thought about the reasons why Mr N says I should re-visit his concerns. However, I'm not persuaded by any of them.*

*I appreciate that Mr N considers the 2018 investigation to have been flawed. However, this is not a reason for me to re-visit complaint issues that have already been determined by another Ombudsman.*

*Regulated businesses like HSBC are obliged to include referral rights to the Financial Ombudsman Service when they issue a final response letter. So the fact that referral rights have been included in the final response letters issued by HSBC on the same subject matter since the Ombudsman's final decision in 2018, doesn't mean that I should re-visit the concerns. It's worth noting that HSBC has consistently said that it would not be re-visiting the subject matter, because it had already been considered by an Ombudsman.*

*Finally, I appreciate that Mr N was given the impression by staff here that his concerns would be able to be looked into. I don't doubt that subsequently being told that isn't the case, will have been frustrating. I noted earlier that Mr N's concerns in this regard have been responded to by another manager here (who was looking into his concerns about the customer service he received from us). While I appreciate Mr N's concerns, it is not a reason for me to re-visit issues that have already been subject to another Ombudsman's final decision.*

*As set out earlier in this decision, Mr N's concerns about how he has been treated with regards to the Safeguarding review haven't previously been considered. So, I've thought about this.*

#### *Mr N's treatment by HSBC relating to the Safeguarding review*

*I've first thought about the issue of Mr N not receiving contact from someone in relation to the Safeguarding review, after he'd been told to expect this. HSBC has admitted that something went wrong and that Mr N was meant to receive contact but didn't. It also said that whilst it regrets someone not contacting Mr N as should have happened, it not doing so didn't prejudice him, because even if contact had been made before the review deadline, it wouldn't have made a difference to the outcome, because Mr N's business wasn't trading.*

*So, the only thing I need to decide is whether the £75 HSBC offered Mr N represents fair compensation for the disappointment and frustration he experienced as a result of not receiving the contact he was expecting.*

*Mr N has clearly experienced a lot of frustration in his dealings with HSBC, but I don't think very much of that stems from the failure of someone to make contact with him, when this should have happened.*

*Bearing that in mind, I think the £75 probably does represent fair compensation and is in line with awards we make in similar circumstances.*

*In terms of Mr N's concerns with the fairness of the outcome of the review – in the context of his broader concerns about how he's been treated.*

*As the investigator said in his view, HSBC is required to have systems and processes in place to protect itself and its customers. I've seen no evidence that in carrying out the review on Mr N's account (in the context of the broader Safeguarding exercise), HSBC was acting maliciously or singling Mr N out in any way.*

*It follows there are no grounds upon which I can reasonably say that the outcome of the review is unfair on Mr N. While he considers it unfair in the context of his interactions with HSBC since 2012, I'm not considering that, for the reasons given earlier in this decision.*

*I understand the account currently remains open. However, under the terms and conditions of the account, HSBC was entitled to give Mr N notice of closure when it did. So, I can't say that it did anything wrong in this regard.*

HSBC didn't provide a response.

Mr N disagreed with my findings. He said, in summary, that:

- My decision represents a continued lack of legal knowledge and assumptions that are not formed by factual evidence rather than of an individual's opinion.
- He specifically asked the investigator for the opportunity to speak with the Ombudsman prior to any review, however this was clearly ignored.
- I appear to have consulted neither the FCA Handbook nor the terms and conditions of the HSBC account. I should provide a detailed response in relation to both of these.
- He has never received a letter from HSBC in relation to the issue of whether he could afford a long term repayment plan. He questioned why he was never asked if he had alternative means.
- The investigator referred to a letter from HSBC. Mr N asked to see a copy of this letter but one has never been provided.
- A representative of HSBC had told him that she had found income and expenditure information that he'd provided at outset, but that there was no evidence that anything had ever been done with the information.
- HSBC's internal notes are not factual forms of evidence. Such evidence would need to be displayed by a 'secure dated document'.
- I clearly show weakness in applying fact and truth and take the easy option of agreeing with my own people.
- New evidence was gained after the date of the 2018 investigation and a completely new investigation was confirmed by phone and e-mail, which I completely omitted from my findings.
- I failed to look into the issue of Mr N waiting 18 months thinking that his concerns were going to be looked at. He wants a full explanation and all internal notes between the investigator he spoke to in 2020 and their manager, regarding the matter.
- The Financial Ombudsman Service has failed to be professional, acted illegally, added to his stress, fuelled HSBC and knowingly attempted to pervert the course of justice.

### **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 reach the same outcome as set out in my provisional decision, that is:

- I shouldn't look at Mr N's complaint about how he has been treated by HSBC since 2012, because another Ombudsman has already issued a final decision on the matter in 2018. And no material new evidence has subsequently become available to Mr N.
- In terms of how Mr N has been treated by HSBC in relation to the Safeguarding review, HSBC has already done enough to put things right.

I'll explain why.

#### *Mr N's treatment by HSBC relating to the Safeguarding review*

Neither party has provided any additional comment or arguments in relation to this. As such, I see no reason to depart from my provisional findings that HSBC doesn't need to do any more in this regard.

#### *Mr N's concerns about how has been treated by HSBC since 2012*

I set out the rules that are relevant to this in my provisional findings, which can be found earlier in and form part of this final decision. So, I won't repeat them word for word here.

But, the essence of the rules that apply are that I may decide not to consider a complaint that has previously been considered by this Service, unless any material new evidence has come to light that wasn't available when the issue was previously considered. This is because re-visiting issues which have already been considered by this Service (and where, in essence, nothing significant has changed) would seriously impair the effective operation of the Financial Ombudsman Service.

Mr N hasn't, in his response, contested that the fundamental issue at hand has been previously considered by this Service. However, he has voiced more strong concerns about the investigation and outcome reached in 2018. Mr N has also re-iterated his position that new evidence has come to light, that he thinks should be considered. And that he was told by a member of staff in 2020 that we could look into his concerns – and this hasn't been addressed.

I appreciate that Mr N disagrees strongly with the outcome reached in 2018 and that he thinks the investigation was flawed. However, as set out in my provisional findings, this is not a reason for me to re-visit an issue that has already been considered by another Ombudsman.

I still don't think that any material new evidence has come to light that wasn't available to Mr N in 2018. He has repeated the argument that a representative of HSBC admitted to him after the investigation in 2018, that HSBC had received income and expenditure information in 2012 and didn't do anything with it. However, as set out in my provisional findings, HSBC subsequently confirmed that there was a telephone conversation with Mr N about the information, at the time. I also set out in my provisional findings, that the Ombudsman's decision in 2018 specifically refers to notes showing that HSBC had collected information about Mr N's income and expenditure. And that when HSBC supplied its file in 2018, this included a file attachment titled "IEX notes 17-09-2012.pdf".

Based on this, I remain satisfied there isn't any material new evidence that has become available to Mr N since he brought the complaint in 2018.

In relation to Mr N's concern that he was told in 2020 that his concerns would be looked into, I did address this in my provisional decision. As before, this has been investigated and addressed outside of this decision by another manager. I can fully appreciate Mr N's

frustration in relation to this, but this is also not a reason for me to re-visit an issue that has already been considered by another Ombudsman.

As already communicated to Mr N (in the letter accompanying the provisional decision), his request to speak to the Ombudsman prior to any review wasn't ignored. Rather, I didn't think it necessary or appropriate to do this before deciding this case.

Finally, Mr N has made a number of direct criticisms of me and my provisional findings. I'm sorry that Mr N feels this way. I can assure him that I've thought carefully about everything he's said, applied the relevant rules and been impartial in my assessment of his case.

### **My final decision**

My final decision is that it's not appropriate for me to consider the issues raised by Mr N about his treatment by HSBC UK Bank Plc since 2012, because this was already considered by another Ombudsman in 2018 and no material new evidence has come to light.

Also, that the £75 HSBC UK Bank Plc offered for someone not contacting Mr N when he was expecting to hear from someone in relation to the Safeguarding review, is fair. And that HSBC UK Bank Plc doesn't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 April 2022.

Ben Brewer  
**Ombudsman**