

The complaint

Mrs H complains that HSBC UK Bank Plc passed her data to a third-party debt collector unlawfully, without her consent. She also complains that HSBC did not handle her complaint correctly.

What happened

Mrs H had a credit card with HSBC. In 2014, HSBC said the account defaulted – but Mrs H disputes this. In 2021, HSBC passed the debt to a third party to recover the debt.

Mrs H complains:

- HSBC transferred her debt to a third party debt collector without her authority or consent.
- About the way that HSBC dealt with her complaint.
- HSBC said her signature didn't match its records and has ignored her request for her husband to represent her.
- Under the Law of Property Act 1925 section 136 only *all* of a debt can be assigned to a third party – not part of it as HSBC has done. That is reflected in HSBC's terms and conditions.
- The debt collector should return her data to HSBC and remove all records it holds.
- HSBC hasn't complied with a subject access request.
- She is being treated differently to her husband. They have always dealt with their "debt issues" together. Yet she is being treated differently to her husband.

I issued a provisional decision. My provisional findings, which form part of this decision were:

Under our rules must determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of a case. In considering what is fair and reasonable in all the circumstances of a case I will take into account relevant:

- *law and regulations;*
- *regulators' rules, guidance and standards;*
- *codes of practice; and*
- *(where appropriate) what I consider to have been good industry practice at the relevant time.*

•

default

HSBC said that Mrs H's account defaulted in 2014. I asked it for evidence of that. HSBC said it didn't have evidence from the time in question, due to the passage of time. That isn't unusual.

HSBC has given us evidence that:

- *It hasn't charged interest on Mrs H's debt since at least 2016.*
- *The records on its systems shows the account being transferred to its internal debt collector on 14 November 2014.*
- *The account was transferred to a different computer system on 14 November 2014, used by its internal debt collector.*

Part of Mrs H's complaint is that HSBC should write off the debt following receipt of income and expenditure information from her and her husband. It would be unusual for a consumer to provide such information to a lender if they were up to date.

The Information Commissioner's Office (ICO) said that a default should be recorded where there are between three and six months in arrears on an account and the relationship between lender and borrower has broken down.

Based on the evidence available to me, I consider it more likely than not that Mrs H's account was in default. It would be unusual for a lender to transfer the debt to its debt collection department and to not apply interest if the account had not defaulted.

transfer to debt collector

HSBC has relied on its terms and conditions to transfer the debt to a third party debt collector:

10. General

a We may at any time transfer our rights and/or our obligations under this Agreement to someone else. If we do this, it will not affect your rights and /or obligations. You may not transfer any of your rights and/or obligations.

Mrs H said that by transferring the debt to a third party it has assigned part of the debt. That goes against the Law of Property Act 1925 section 136, which allows only a full assignment of a debt. The law takes precedence over any terms and conditions.

I don't consider that Mrs H's debt was assigned to the third party, either fully or partially. I say that because HSBC retained the debt. The debt collector was merely collecting the debt on its behalf. This is a regulated activity – and is standard banking practice. I consider it would be difficult for me to find that HSBC has acted unfairly or unreasonably by engaging a third party to carry out an activity that the FCA has regulated. And the same rules (and requirement to treat Mrs H fairly) apply to the debt collector and HSBC. So I can't see any detriment to Mrs H by the referral to the debt collector.

Mrs H also argues that HSBC has breached the Data Protection Act 2018 and General Data Protection Regulation (GDPR) by passing her personal data to the debt collector. The ICO would deal with any breach of the Data Protection Act. It is something I must take into account in deciding what is fair and reasonable in the circumstances of a complaint.

HSBC passed Mrs H's data to a third party. The terms and conditions of the account allowed for that:

11. Your information

Confidentiality

a Information we hold about you will not be disclosed to anyone (including other members of the HSBC Group) other than where:

...

- As set out in the terms below.*

...

Crime Prevention and Debt Recovery

...

e To prevent crime, verify your identity, recover debt...

The terms and conditions allowed HSBC to transfer Mrs H's data in the way it did. And as I've said, debt collection by a third party by a debt collector is a regulated activity. That would always require a borrower's personal data to be passed to a third party. It follows that passing data in such a way would be consistent with the FCA's rules.

Consent is only one of the lawful ways in which data can be processed (including handing it over to third parties such as a debt collection agency). I think it is unlikely that HSBC would be relying on Mrs H's consent since realistically many people would refuse to consent to their data being provided to a third party such as a debt collection agency.

There is an exemption for processing personal data under GDPR where there is a legitimate interest. Bearing in mind that HSBC is undertaking a regulated activity and enforcing its rights under the contract I consider that asking a third party to recover the debt would be a legitimate interest, where passing Mrs H's details to a third party is necessary.

While the third party debt collector may have chosen to accept Mrs H's request not to deal with her, it doesn't follow that HSBC acted unfairly or unreasonably in appointing it in the first place.

I've found it was reasonable for HSBC to appoint the third party. I can't see how I could reasonably find that any contact from the third party was harassment. And it was reasonable for HSBC to refuse to discuss the account with Mrs H – it had appointed the third party to deal with the debt on its behalf.

complaint handling

A complaint is defined by the FCA as an expression of dissatisfaction about provision of a financial service. There is clearly an underlying financial service that Mrs H is complaining about – the appointment of a third party to recover the debt. So I consider that we can consider how HSBC dealt with the points that Mrs H made directly about the administration of her account.

While Mrs H might not be happy with how HSBC dealt with the complaint, I don't consider it was unfair or unreasonable. I think its final response addressed the complaint – and it isn't required to correspond further after that.

signature

I agree with the investigator here. It was reasonable in the circumstances for HSBC to check that Mrs H wanted her husband to represent her. I don't consider HSBC was being "obstructive".

subject access request

HSBC accepted the investigator's proposal to pay Mrs H £150 for any distress and inconvenience the delay in dealing with the subject access request caused to her. I think this

is fair. Nothing she or her representative has said would lead me to conclude this should be increased.

Mrs H is being treated differently from her husband

HSBC isn't required to write off Mrs H's debt just because it did that for her husband. Mrs H might view their circumstances and inseparable, but it was reasonable for HSBC to look at them individually. The account in question was in Mrs H's sole name.

HSBC is obliged to treat Mrs H fairly. But it can only do so if both sides meaningfully engage with each other. It appears this matter has got in the way of that happening. As things stand, I don't consider it was unreasonable for HSBC not to write off Mrs H's debt.

Mrs H said that no collection activity has taken place since the debt collector passed the recovery of the debt back to HSBC. That might be because of this ongoing dispute.

Mrs H's husband, on her behalf, responded to make a number of points, including:

- Mrs H made payments of £1 a month to HSBC and submitted financial information to it. No default notice was sent to her.
- HSBC can't require Mrs H to engage with a third party debt collector. Mrs H has a right to object to the third party having her data. She has no contractual or statutory relationship with the third party. Mrs H exercised her rights, but HSBC stopped dealing with her.
- Mrs H has no legal obligation to communicate with the third party. But she has no legal obligation to do so. Custom, practice, contracts or convenience can't override her statutory rights to object to any previous consent.
- It was inappropriate for me to introduce a new contractual term that was not raised by HSBC.
- By refusing to deal with Mrs H, HSBC is trying to force her to engage with the debt collector. But the debt collector had withdrawn from acting as HSBC's agent. That is unreasonable conduct and victimisation because she complained. It was perverse, biased, unreasonable and flawed in law for me to say HSBC had a right to do that.
- Mrs H did not ask me to comment on whether HSBC should write off her debt. That was matter for her and HSBC.
- Legislation made by parliament takes precedence over secondary legislation, secondary legislation from parliament takes precedence over policies, codes or custom and practice.
- Mrs H has statutory rights under the Data Protection Act 2018 (the Act) sections 93-100. She has the right to access data held by another, right to object to processing and to seek rectification. HSBC has not complied with several data subject access requests.
- HSBC did not comply with section 99 of the Act. Mrs H exercised her right to tell the data processor not to contact her again. Yet, the data controller told the processor to contact her again, knowing she had objected. That is harassment under the Harassment Act. The law is clear that if HSBC had not complied with the law within 21 days then it can't rely on any exemption.

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.

default

HSBC said the account defaulted in 2014. Due to the length of time since the default it wouldn't be unusual for it not to be able to produce a default notice.

I don't think the points Mrs H makes help her case. It would be very unusual for a lender to accept token payments of £1 a month for such a long period of time without the account technically being in default. If the account was operating "normally" she would need to make higher payments each month and there would be no need for her to submit financial information to HSBC.

I'm satisfied that the account meets The Information Commissioner's Office (ICO) definition of a default for the reasons set out above.

transfer to debt collector

As I've explained to Mrs H's husband, we aren't a court. We are an informal dispute resolution service. I must take into account all of the evidence to decide what I consider is fair and reasonable in the individual circumstances of a complaint. Just because one side has not mentioned a piece of evidence that has been provided, does not mean that I can't take that evidence into account.

The terms and conditions allowed HSBC to transfer Mrs H's data in the way it did. And as I've said, debt collection by a third party by a debt collector is a regulated activity. That would always require a borrower's personal data to be passed to a third party. It follows that passing data in such a way would be consistent with the FCA's rules.

I am not saying that the FCA's rules supersede the law. Rather it was to highlight that Mrs H was wrong to say that the debt had been partially assigned to the debt collector against the law, when in fact the debt collector was merely collecting the debt on behalf of HSBC and that was a legitimate thing for HSBC to do. In any case, I don't consider the FCA's rules are inconsistent with the relevant law.

Consent is only one of the lawful ways in which data can be processed (including handing it over to third parties such as a debt collection agency). I think it is unlikely that HSBC would be relying on Mrs H's consent since realistically many people would refuse to consent to their data being provided to a third party such as a debt collection agency.

There is an exemption for processing personal data under GDPR where there is a legitimate interest. Bearing in mind that HSBC is undertaking a regulated activity and enforcing its rights under the contract I consider that asking a third party to recover the debt would be a legitimate interest, where passing Mrs H's details to a third party is necessary.

While the third party debt collector may have chosen to accept Mrs H's request not to deal with her, it doesn't follow that HSBC acted unfairly or unreasonably in appointing it in the first place. I consider it was reasonable for it to do so bearing in mind it likely had a legitimate interest in doing so – even if Mrs H did not consent to that.

Mrs H said that HSBC failed to deal with her data subject access request where she withdrew her consent to deal with the third party debt collector within the required timescale.

As a result HSBC should not have continued to instruct the debt collector to act on its behalf and contact Mrs H after that point.

I understand Mrs H made two subject access requests to HSBC on 8 August 2021 and 25 February 2022. I can't deal with any complaint arising out the 2022 request as that is an event that happened after this complaint was referred to us.

HSBC did not deal with the 2021 subject access request within the 21 days it had. But the Act says that if the data controller (HSBC) does not comply with that then then the data subject (Mrs H) may apply to court for an order for the controller to comply with the notice. As far as I can see only a court can make that decision – and it is for it to decide whether HSBC should comply with the notice or not.

My own view is that HSBC did (for the reasons I've explained) have a legitimate interest in passing Mrs H's details to a third party debt collector. It clearly did not deal with the request from Mrs H properly. But it had grounds not to comply with Mrs H's objection – and just because Mrs H made an objection does not mean HSBC had to comply with it.

In view of that, and in the absence of any court order, I don't consider it was unfair for HSBC to continue to instruct the third party in those circumstances. If Mrs H thought that HSBC should comply with her objection for technical reasons under the Act then that is something she would need to raise in court or through the ICO's complaint process.

It follows – in the absence of any court order or ruling from the ICO – that any attempt by the debt collector to contact Mrs H on behalf of HSBC was not unreasonable. And in any case, the debt collector has now complied with Mrs H's request.

The debt collector was required under the relevant rules to treat Mrs H as HSBC would. I can't see there was any real disadvantage to Mrs H in dealing with the debt collector rather than HSBC directly.

I don't consider it was unreasonable for HSBC not to enter into further communication with Mrs H while this matter was ongoing. I can't see that has caused Mrs H any real detriment. There is nothing to prevent HSBC engaging with Mrs H once my decision has been issued if there is no formal arrangement in place or if Mrs H wishes to discuss her circumstances.

complaint handling

A complaint is defined by the FCA as an expression of dissatisfaction about provision of a financial service. There is clearly an underlying financial service that Mrs H is complaining about – the appointment of a third party to recover the debt. So I consider that we can look at how HSBC dealt with the points that Mrs H made directly about the administration of her account.

While Mrs H might not be happy with how HSBC dealt with the complaint, I don't consider it was unfair or unreasonable. I think its final response addressed the complaint – and it isn't required to correspond further after that.

signature

I agree with the investigator here. It was reasonable in the circumstances for HSBC to check that Mrs H wanted her husband to represent her. I don't consider HSBC was being obstructive.

subject access request

HSBC accepted the investigator's proposal to pay Mrs H £150 for any distress and inconvenience the delay in dealing with the subject access request caused to her. I think this is a fair amount to reflect the distress and inconvenience caused to Mrs H by HSBC's failure to deal with the subject access request properly.

Mrs H is being treated differently from her husband

I can't agree that this did not form part of Mrs H's complaint. On 12 November 2021, Mrs H and her husband signed a complaint form, which stated:

"...I consider I have been treated differently to my husband as a household all our income is pooled and I am in exactly the same position as my husband the debt should be written off."

This matter was dealt with in the investigator's opinion – and I can't see that Mrs H or her representative objected to that.

It was correct for me to address that complaint in my provisional decision. But as Mrs H has effectively withdrawn that complaint, I will not deal with it further.

My final decision

My final decision is that HSBC Bank UK Plc should pay Mrs H £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 15 February 2023.

Ken Rose
Ombudsman