

The complaint

Mr C complains that he had issues opening an account with HSBC Bank Plc which led to him making Subject Access Requests (SARs).

What happened

Mr C attempted to open an account with HSBC but was asked to visit a branch with identification as his information did not match what HSBC had on their system. Mr C questioned why HSBC had information on file for him as he had not had an account with them for many years. He raised a complaint about them retaining his data as he felt it breached legislation. HSBC responded explaining it had retained his data in line with what is expected of them.

Mr C referred this to our service and was issued with a jurisdiction decision explaining that he had referred it too late. This is because he had not referred it within the six-month deadline set out in HSBC's final response letters.

Following the issues opening an account with HSBC, Mr C made a series of SARs relating to what information HSBC held about him, specifically in connection to his previous address.

Unfortunately, some acknowledgements letters from HSBC during this time were sent to Mr C's previous address. HSBC has confirmed they have now put a marker on the account to ensure the previous address is not used again. They offered Mr C £750 to apologise for this and to acknowledge the distress and inconvenience this has caused him. Mr C was unhappy with this and also felt HSBC's responses to his SARs was insufficient and did not comply with data legislation.

Our Investigator looked into the complaint and felt that the offer of £750 compensation for letters being sent to Mr C's previous address was fair in the circumstances. They explained that when HSBC received Mr C's SARs, they gathered data from specific sources. At the time, none of the sources included historic address information which is why this was not included in Mr C's response. As this was not their process at the time, the Investigator did not feel HSBC had made an error in not including it, and the Investigator provided Mr C with a copy of the historic address information alongside the view. They also clarified that some of Mr C's complaint points around HSBC's privacy notice and whether they have breached data regulations were better placed for the Information Commissioner's Office (ICO) to comment on.

Mr C did not agree with the findings. He felt the £750 compensation offered was low compared to other cases he had seen which he felt were similar. He had further questions around the historic address information provided alongside the view and about other information he felt HSBC had on file about him. He reiterated that he felt we should be considering the data retention policy of HSBC in detail and that HSBC's privacy notice did not fully answer his right to be informed.

As an informal agreement could not be reached, the complaint has been passed to me 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.

There's a great deal of correspondence on this complaint and Mr C has provided detailed submissions, all of which I have considered. In this decision I will focus on issues which are - in my opinion - relevant to reaching a fair outcome to this complaint. This isn't meant as a discourtesy to Mr C. It simply reflects the informal nature of our service. I also want to make it clear that our role as a dispute resolution service has its limitations so I want to clarify that:

- The ICO regulates compliance to data protection laws in the UK. It has a number of powers including the power to order businesses to comply with data protection laws. Only the ICO can determine whether or not an organisation has broken data protection laws.
- This service can't act in place of the ICO, or make a finding about whether or not a business has broken data protection laws. But we can look at what's fair and reasonable in all the circumstances of a dispute.

Here, the complaint arises from the fact that HSBC held information about Mr C which led to him having difficulties opening a current account, and they then provided responses to SARs which Mr C felt were unreasonable.

I explained above that Mr C's complaint points around HSBC's retention of his data is outside of our service's jurisdiction and this has been set out in a jurisdiction decision by another ombudsman. I appreciate Mr C's strength of feeling that this should be considered as a part of this complaint, but our rules are clear on what we can and cannot consider. Because of this I will not be commenting on the retention of Mr C's data.

I've firstly focussed on the effect HSBC sending letters to Mr C's old address had on him. It is not in dispute that HSBC made an error in the circumstances and that they sent letters to an address that they should not have done. They have acknowledged this and offered £750. I've considered if I think this is a reasonable resolution in the circumstances.

Mr C has said in his submissions that he spoke with the individual that now lives at the address, who said they had disposed of the letters without opening them. I can appreciate that prior to this, Mr C was likely worried about his private information being viewed by someone else, but he eventually had confirmation that this was not the case. I understand that Mr C feels other cases have had higher compensation awards for data breaches, but I have to consider each case on its individual merits. And having done so, I think the £750 already offered is more than I would have awarded for this particular complaint point on its own. So I don't think HSBC has to take further action to remedy this complaint point.

I've then considered the SAR requests that Mr C made following his attempt to open an account in branch. I'd like to reiterate again that in doing so, I am not determining if HSBC has broken data protection laws, but I am considering if they have acted fairly and reasonably when dealing with Mr C's SARs.

Mr C's initial SAR request was for all information relating to accounts held at his previous address. In response he received redacted letters that had been sent to his old address in error, redacted letters about a complaint with our service and a copy of his signature amongst other things. Mr C felt a profile connected to the account showing his old address should have been available and provided at the time.

HSBC has provided an explanation as to why Mr C's historic address history was not provided at the time of the first SAR. Their process at the time was to go to four departments within HSBC and gather data from all those departments. At the time, this did not include the department that would have provided the historic address information. It is now their policy to include this information in all SARs.

I've thought about this carefully. While I appreciate it wasn't their process at the time, I think once it became clear the crux of Mr C's complaint was that he thought HSBC had his historic address on file, they could have arranged to send this information to him. I've thought about what impact this would have had on Mr C, had he received this information earlier.

Firstly, I have to consider that in response to Mr C's SAR, he was sent redacted letters addressed to his previous address. So, I think it was clear HSBC did still have his previous address on file otherwise this would not have been possible. Secondly, I've considered Mr C's actions once he received the historic address document alongside our Investigator's view. From what I can see, this document has only raised more questions from Mr C about when his account was officially closed, why specific information is on the document and why other addresses don't also appear on it. Because of this, I think it is unlikely that Mr C would have been satisfied had he received this document in response to his initial SAR request.

On balance, I do think HSBC could have provided the historic address information sooner and I also think they have not engaged with all the specific requests Mr C made in his SARs. For example, Mr C asked what their CCTV retention policy is, if they hold telephone recordings and if information about him has been sent internationally. But I can't see these have specifically been answered. In addition, HSBC did not process his second SAR request as they should have done which caused delays. I've considered the impact this has had and it's clear that HSBC's limited responses have frustrated Mr C and I've factored this in when coming to a compensation recommendation that I feel is fair. I can't see that this has caused Mr C any financial loss, so I have only considered the distress and inconvenience it has caused him.

Throughout the course of this complaint, Mr C has also raised complaint points around his right to be informed and the privacy notice of HSBC not being sufficient to answer this. As well as other more detailed queries about data protection law. It's clear Mr C has done extensive research on the topic and I understand how important this issue is to him.

As explained above, it is not my role to determine if HSBC has broken data protection laws and it isn't within my remit to comment on if their privacy notice meets those laws. The Dispute Resolution Rules (DISP), section 3.6.4R of the Financial Conduct Authority (FCA) Handbook, set out what I will consider on a case. This includes relevant law and regulations, regulatory rules and guidance, codes of practice and what I consider to be good industry practice. When considering this, my role is to determine what is fair and reasonable in all the circumstances of the case.

While I recognise that HSBC may not have answered all of Mr C's queries in a way he felt was correct, it would not be reasonable for me to fine or punish HSBC for this. I can consider the effect this has had on Mr C and while I understand the process has frustrated him, I also think he has made the choice to continue to engage with this issue in detail which has prolonged the situation for all parties.

Ultimately, while I understand Mr C may not feel it is sufficient, had this complaint come to me with no offer of compensation, I would have recommended in the region of £750 for all of the issues Mr C faced. Because of this, I think the offer already made by HSBC is fair in the circumstances and I now direct it to pay this to Mr C.

My final decision

HSBC UK Bank Plc has already made an offer to pay Mr C £750 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that HSBC UK Bank Plc should pay Mr C £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 March 2023.

Rebecca Norris

Ombudsman