

The complaint

D complain HSBC UK Bank Plc (“HSBC”) unfairly restricted their account when asking for more information as part of its *Safeguard* review. D add that HSBC failed to properly communicate with them that it needed this information.

D say HSBC’s actions have caused it significant inconvenience – and distress to its director.

What happened

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

In April, May and June 2023, HSBC sent D letters saying it required them to get in touch and complete its *Safeguard* review. D completed and returned the form in late June 2023. HSBC then needed more information and asked D to send this as attached documents.

HSBC say the document D provided was unclear. In August 2023, HSBC sent D an email requesting more information and were unsuccessful when attempting to call. HSBC say it didn’t leave a voicemail for D to contact it due to a previous failed security check.

As HSBC didn’t hear from D, it restricted their account in September 2023 and initiated the process of closing the account in 60 days. When D discovered this, its director attempted to contact HSBC, but was told his telephone security was no longer valid and he would have to visit a branch with ID to resolve the matter. D provided HSBC with the further information it wanted and the restriction on their business account was lifted in early October 2023.

Unhappy with HSBC’s actions D complained.

D say HSBC failed to communicate properly with them, and had it done so, D would have provided the information without the need for their account to be restricted. D’s director says because of the restrictions, they had to change and reinstate their direct debits, spend significant time in branch and in making calls causing a disruption to their ability to carry out normal business activity, distress, and anxiety. They’ve also said that the prospect of not being able to use their client account and loss of reputation and business caused the director added distress.

HSBC didn’t uphold D’s complaint. In short, it said:

- HSBC has a legal requirement to show its regulator that it’s taking steps to protect its customers from fraud and financial crime. That is why its *Safeguard* review is important and needs to be completed
- HSBC’s records show that D failed its telephone banking security in September 2021. That is why it had to reset this before speaking to D’s and its representative in September 2023.

- HSBC hasn't made any errors in the actions it's taken, but as a gesture of goodwill, would like to offer D £50
- HSBC has taken onboard the feedback that some customers would expect it to try and contact them through other means. But its current process for a *Safeguard* review has been followed. So it hasn't done anything wrong

D referred their complaint to this service. One of our Investigator's looked into it, and they recommended the complaint was upheld. In summary, their key findings were:

- HSBC hasn't been able to evidence that D sent it unclear information. D doesn't have this information either. As HSBC say it was unclear, it has a responsibility to provide a copy. Because of this, it's not possible to say HSBC acted fairly. So there isn't enough evidence to say D provided the required information it was further asked to do so in August 2023
- D accept it received the email from HSBC on 4 August 2023 and that it was overlooked. HSBC also attempted to call D. It was reasonable for HSBC to not leave a voicemail message as D's telephone security credentials needed to be reset. HSBC could've attempted another call or sent another follow-up email. But as D didn't respond to the former, its possible any further attempts would've resulted in the same outcome
- As D and its director are separate legal entities, they can't consider any personal impact to the director, but only D. D's director took mitigating action by loaning personal funds to avoid disruption to their business.

But D didn't take mitigating action given many emails from HSBC at the offset of the review weren't responded to. Had D completed the required form sooner its likely HSBC wouldn't have acted so quickly to restrict the account. The same mitigation would apply had D responded to the email or phone call in August 2023

- As HSBC hasn't been able to show D sent it unclear information, it should pay 8% simple interest on the balance of the account for the period of the restrictions – 21 September 2023 until 2 October 2023
- HSBC should also refund any fees for missed payments due to regular payments given they would've been caused by the account restriction
- HSBC should compensate D for the interruption to their normal business activity. D's director had to take time out from normal business activity including a visit to branch, and in making alternative arrangements for regular payments. When taking this into account, and any mitigating factors, HSBC should pay £200 compensation

HSBC didn't agree with what our Investigator said. It says the correct process was followed and D were aware of its requirements. But it is willing to settle the complaint to close the matter.

D didn't agree either. In short, they've made the following key points:

- The *Safeguard* review's deadline was in September 2023, and D initially provided the information requested in June 2023. And they followed up on a further request in July 2023. HSBC didn't give any further warnings about the account being restricted after this

- They don't agree it was reasonable for HSBC to not leave a message due to the security issues it's cited. D doesn't recall any security issues in recent years. So HSBC should've left a message which would've prompted D to make contact
- HSBC should have tried harder to inform D their account was going to be blocked, like a renewal of the pop-up banner on their online banking or by letter
- The recommended compensation of £200 is too low

Our Investigator considered D's further points, and said:

- The deadline of 21 September 2023 wasn't the initial one as HSBC had written to D originally in April 2023 about the Safeguard review with a deadline of 13 July 2023
- A financial business wouldn't be expected, where phone security has previously failed and not reinstated, to leave a voice message. That's because they would need to speak to a customer and verify their identity before giving any account information. It's also reasonable D wouldn't remember failing such security in 2021

D added it was certain it spoke to HSBC on several occasions after 2021, though unfortunately it has no records of this.

As there's no agreement, this complaint has been passed to me to decide.

What I've decided – and why

I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything D and HSBC have said before reaching my decision.

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 have decided to uphold this complaint. I'll explain why.

Banks in the UK, like HSBC, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

These obligations generally cover the entire period of its customer relationship – from application to eventually the end of the relationship. This includes Know Your Customer (KYC) checks and/or Customer Due Diligence (CDD). It's worth noting these checks include not just the verification of a customer's identity, but also establishing the purpose and intended nature of the business relationship and origin of funds. HSBC's '*Safeguard*' review falls under these obligations. HSBC has sent me copies of the letters it sent to D explaining it needed to carry out such a review. I'm satisfied that by doing so HSBC was going about meeting its obligations.

This brings me to the crux of D's complaint. That is whether HSBC acted fairly in asking for further information after D had already made at least a couple of submissions by August 2023, and whether it had communicated this to them fairly.

After careful consideration, I'm persuaded HSBC hasn't. That's because it hasn't been able to show the attached document D sent prior to this point was 'unclear'. Given the proximity of this event, I would expect HSBC to be able to provide this – particularly as it's an integral part of this complaint and one of the main reasons that led to HSBC restricting the account.

D says that previous online banking banners indicating they needed to contact HSBC about the review would've prompted them to do so. HSBC say the banners would've shown. Neither party has shown this would've been the case, so it's not something I can put too much weight on here.

However, HSBC could've attempted to call D again and sent a further email. More importantly, given the gravitas of the actions it was thinking of taking, and as D has complied with previous requests, I'm persuaded HSBC should also have sent letters to prompt contact from D. So I think HSBC should have done more to communicate effectively with D.

I do also agree that there are mitigating factors I need to weigh up against any compensation I award. D did after all receive the August 2023 email, which they're expected to read. And HSBC did attempt to call them. I note that D say HSBC should've left a voicemail message and I can understand why say this. But HSBC has sent me its internal records which show there was a telephone security issue in 2021.

HSBC has processes in place to ensure it's taking appropriate steps to verify its customers to ensure the security of their and its information. Such measures ensure it's taking reasonable steps to prevent financial harm. So, I don't think it has done anything wrong in asking D's director to reinstate this by going into branch with ID and following its normal process. I'm satisfied that once this was done, HSBC acted promptly and without undue delay. Having said that, these are mitigating or contributory factors I need to consider when awarding any compensation.

Given I'm not satisfied the information D sent was unclear, it follows that I can't be persuaded the restriction on the account should have applied. D would've been deprived of access to these funds. So HSBC should pay them 8% simple interest for the period of the restriction on the account balance.

I can't also award any compensation for the distress and anxiety D's director say they suffered. That's because the eligible complainant here is D, which is a separate legal entity to its director as a private individual capable of suffering such emotions. But I can consider any inconvenience D has been caused through its director not being able to carry out normal business activity, and the interruption this has caused.

Fortunately, D's director was able to persuade HSBC not to restrict its client account – which I understand would've caused them substantive detriment. Also, D's director was able to use their own funds to loan to D to avert any cashflow issues. I can understand why the possibility of not being able to do this would've caused concern – but I must award compensation based on actual detriment as opposed to what may have happened.

Having said that, I agree that having to reinstate direct debits, engage in many calls and contact attempts would've caused inconvenience. After carefully weighing this up against the mitigating factors I've outlined above, I'm satisfied £200 is fair compensation.

Putting things right

To put things right, HSBC must:

- Pay D £200 compensation
- Pay 8% simple interest on the account balance for the period of the restriction – 21 September 2023 until 2 October 2023*
- Refund any fees and charges on missed direct debit and regular payments during the period of the restriction

* If HSBC considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell D how much it's taken off. It should also give D a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons above, I have decided to uphold this complaint in part. HSBC UK Bank Plc must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 28 October 2024.

Ketan Nagla
Ombudsman