

The complaint

Mr J complains about the way HSBC UK Bank plc ('HSBC') handled his Data Subject Access Request ('DSAR') which he made to obtain statements for a closed credit card.

Mr J says that due to HSBC's actions he was unable to pursue a court claim before it became statute barred.

To put things right Mr J wants HSBC to pay him £15,000 – the amount that would have been sought in the court claim.

What happened

Mr J had a rewards credit card which was provided by HSBC in partnership with a company I shall refer to as 'JL'. In 2022 HSBC withdrew from that partnership, and as a result Mr J's rewards credit card account became inactive.

In December 2023 Mr J approached a solicitor to start a court claim against a motor dealership regarding a fault with his vehicle, which he had paid £15,000 to repair. Mr J had been told by his solicitor that he would not be able to issue his claim after 31 January 2024 because it would become statute barred.

Mr J wished to use his legal expenses insurance ('Insurance') to fund his solicitor to issue the claim, but to do this he needed to access copies of his credit card statements from 2017 ('Statements') to check who he had paid his insurance premium to at the relevant time.

On 29 December 2023 Mr J telephoned HSBC's customer service team and made a DSAR for his Statements. HSBC said they'd send the Statements to Mr J within 10 working days. Mr J also telephoned HSBC on 5 and 16 January 2024 to ask again for his Statements, which he hadn't received. Mr J stressed his request was time sensitive, and a matter of importance to him. On both occasions Mr J was told by HSBC that the Statements would be emailed to him within 10 working days.

Mr J didn't receive the Statements, so he made a complaint to HSBC.

On 7 February 2024 HSBC responded to Mr J's complaint. HSBC apologised for any incorrect information they'd provided whilst dealing with Mr J's DSAR. HSBC offered £100 to Mr J for the distress and inconvenience caused to him, which he accepted.

HSBC also suggested Mr J follow a process to see if he could recover the costs of his vehicle repairs under Section 75 of the Consumer Credit Act 1974 – but this was not successful.

Mr J received his Statements from HSBC on 19 February 2024, which was after his court claim had become statute barred.

Mr J brought a complaint to our service and our investigator upheld Mr J's complaint in part. She decided HSBC should pay Mr J a total of £250 for distress and inconvenience, referring

to our guidance. However she did not award Mr J any compensation for financial loss, which Mr J said stemmed from HSBC's delays, because she said Mr J could not provide evidence that he would have been successful with his court claim.

Mr J did not accept this. His concern was that HSBC's actions meant he had not been able to pursue his court claim and he was now out of pocket by £15,000. He asked for an ombudsman to look at his complaint, which is how I have become involved.

My provisional findings

In July 2024 I issued a provisional decision for this complaint, as follows:

"I have looked at all the evidence and information provided by HSBC and Mr J to decide what is fair and reasonable in the circumstances of this complaint. In doing so I am minded to reach the same conclusion as our investigator, which is to uphold Mr J's complaint in part, although my reasoning is slightly different.

HSBC concede that they got things wrong when dealing with Mr J's DSAR. HSBC recognise they should have directed Mr J to JL's customer service team who could deal with his credit card account and the request.

When Mr J first called HSBC they said it would take them up to 10 working days to email Mr J's Statements to him - which would have been by 12 January 2024 - but due to difficulties getting the information from his inactive account the Statements were emailed to Mr J on 19 February 2024. This is over a month after Mr J made his DSAR, which is far longer than HSBC said they'd take. It is also longer than the Information Commissioner's Office – which gives guidance about how to comply with DSARs - would normally expect.

I agree with our investigator that HSBC did not treat Mr J fairly when dealing with Mr J's DSAR, and that in these circumstances HSBC's payment of £100 for distress and inconvenience did not go far enough.

When our service looks at compensation for distress and inconvenience, we consult our internal guidance which helps us identify an appropriate award. This requires us to look at how things went wrong and the impact this had on a customer.

Mr J telephoned HSBC three times about his DSAR, although I think it fair to say that it was a little early when Mr J rang on 5 January 2024, as a full 10 working days had not elapsed since his initial request. During each telephone call HSBC failed to direct Mr J to the correct customer service team dealing with his account, and HSBC assured Mr J that they would take steps to provide his Statements within 10 working days.

I note that when Mr J rang HSBC on 5 and 16 January 2024, there was no record of his previous call(s) or DSAR, and so Mr J had to repeatedly set out his circumstances. On 16 January HSBC's call agent confirmed there was no computer record due to Mr J's account being inactive but reassured Mr J his DSAR would have been actioned by HSBC sending a message to another team at the time his DSAR was made.

It is not my role to interfere with HSBC's procedures for keeping records of their calls and DSARs, but I consider HSBC's handling of its process here put Mr J to far more inconvenience than I would reasonably expect for a straightforward request.

And having listened to the telephone calls, I recognise that this matter became increasingly distressing for Mr J as the deadline to issue his claim approached and he still had not received his Statements.

In these circumstances, I am minded to agree with our investigator that HSBC should pay a further £150 to Mr J. This would increase the payment to Mr J for distress and inconvenience to £250 in total.

I understand Mr J feels strongly that HSBC's handling of his DSAR meant he was not able to issue his claim before it became statute barred, and he wants HSBC to pay him what he was expecting to be awarded by the court.

I have considered whether it is fair and reasonable to hold HSBC responsible for any financial loss in these circumstances.

I know this will be a disappointment to Mr J but I am not minded to require HSBC to pay anything to him for financial loss. I hope the reasons below are clear in explaining my decision.

I acknowledge Mr J wanted to use his Insurance to engage a solicitor to issue his claim and he needed his Statements to confirm the name of his Insurance provider. But given the timeframes here I think there was a reasonable chance that arranging Insurance might not have been possible within the two-week period before the claim became statute barred, even if HSBC had provided the Statements in the expected timeframe. The Insurer would have needed to consider the claim.

I do not know if it was possible for Mr J to fund his solicitor by other means, but I consider it was possible for Mr J to issue the claim himself before it became statute barred. Any individual can issue a court claim by either filling out a claim form on paper or online, and a benefit called a 'fee remission' is in place to help if court fees aren't affordable.

And in circumstances where Mr J's claim was about to be statute barred, Mr J could have issued what is called a 'protective claim'. A protective claim is a document that often contains only a sentence or two about the nature of the claim, and it is sent to the court to ensure a deadline for bringing the claim is not missed. The court dates the claim as being brought in time, and then allows a claimant several months to provide further details of the claim.

So, despite the issues he experienced in arranging Insurance to pay for his solicitor, I am of the view that Mr J had some options open to him to issue his claim before it became statute barred. And given how important this was to Mr J, and the efforts he was going to, including engaging with a solicitor, I think Mr J could reasonably have become aware of these options at the time.

Looking at the circumstances of this complaint, I am of the view that I cannot fairly conclude that HSBC were responsible for Mr J's claim not being issued before it became statute barred.

And even if HSBC were responsible, I couldn't reasonably decide that Mr J had lost money as a result.

This is because I have not seen any evidence that Mr J's claim would have been successful against the motor dealership. And even if his claim had been successful, I do not know for certain what amount the court would have ordered the motor dealership to pay to Mr J, or that the motor dealership would have actually paid this sum to Mr J.

Accordingly, I am not minded to require HSBC to pay anything to Mr J for financial loss."

Responses to my provisional decision

In my provisional decision, I asked both HSBC and Mr J to respond within a set timeframe if they had any further comments or evidence that they would like me to consider before I made a final decision.

That timeframe has now expired and neither party has provided me with anything further to consider.

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.

Because neither party has provided me with anything further to consider, in all the circumstances, I conclude that the basis of my provisional decision provides a fair and reasonable outcome to Mr J's complaint. I therefore see no reason to depart from my provisional findings.

Putting things right

To put things right HSBC UK Bank plc should pay Mr J a total of £250 for distress and inconvenience.

As Mr J has already received £100 this would mean a further payment to Mr J of £150.

My final decision

For the reasons I've given, I uphold this complaint in part. To put things right HSBC UK Bank plc should take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 September 2024.

Clare Burgess-Cade
Ombudsman