

The complaint

Mr J complains that HSBC UK Bank Plc trading as first direct are not complying with Section 97A of the Consumer Credit Act 1974 which is impacting his ability to make sound financial decisions.

What happened

Mr J has a personal loan with First Direct. He says that First Direct are in breach of their statutory duty to provide information in line with Section 97A (s.97A) of the Consumer Credit Act 1974 (CCA), as when he has made a number of partial repayments to his loan, First Direct have not issued information in line with s.97A. Mr J has said that call handlers he has spoken to make it difficult, or openly refuse to log his request for the information he's entitled to under s.97A on multiple occasions. He says he hasn't had the relevant information that he's asked for yet. Mr J made a complaint to First Direct.

First Direct did not uphold Mr J's complaint. They said they can provide settlement figures and a report on request as this is not sent or produced automatically. Mr J brought his complaint to our service.

First Direct made an offer to resolve Mr J's complaint. They offered him £200 compensation for distress and inconvenience caused, and to review their processes to see how they can provide the information that Mr J requires. Mr J rejected the offer.

Our investigator upheld Mr J's complaint. He said that the £200 offer was fair. He said Mr J had requested the partial early repayment (PER) letters, but the call handlers didn't understand his query, made it difficult for him to pursue the matter, and the PER letters weren't sent. Our investigator said First Direct had drafted Mr J a PER based on overpayments Mr J had made and he would forward that to Mr J. He said First Direct do have a system in place to produce such letters and they would highlight this to their staff.

Mr J asked for an ombudsman to review his complaint. He made a number of points. In summary, he said First Direct have not complied with s.97A of the CCA as none of the multiple statements that he's requested have been provided so far. He said the PER First Direct produced shows the effects of some previous payments, which was not what was requested, and it doesn't comply with s.97A. Mr J says this doesn't help him moving forward with his finances, and he wanted a statement for each overpayment he made.

Mr J said that there is a lack of evidence that First Direct have a process in place to ensure future compliance with s.97A, as recent interaction with them shows the request has not been complied with, and they won't deal with new requests. Mr J said the compensation that has been offered does not correspond to the time and effort put into resolving the issue, let alone the distress and inconvenience caused to him.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Firstly, I'm aware that I've only summarised Mr J's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I'd like to explain to Mr J that it is not within this service's remit to tell a business how they should run their policies and procedures, such as how their systems should operate, and how quick they should implement fixes to their systems when a shortcoming has been identified. It would be the role of the regulator – the Financial Conduct Authority, who have the power to instruct First Direct to make changes to their policies and procedures, if necessary.

Mr J asked First Direct multiple times to provide him with a statement when he's made an overpayment which complies with s.97A of the CCA. But at no point have First Direct issued Mr J a statement with all of the details required under s.97A of the CCA, which is surprising considering that this is statutory. Even when they issued PER letters, I'm not persuaded everything First Direct were required to include was in this letter as it didn't inform Mr J if there was any change to the number of repayments to be made under the agreement.

While some of the overpayments may not have changed the number/timing/amount of repayments/the duration of the agreement, I've considered the cumulative effect of the overpayments shown on the two PER's that First Direct has issued to Mr J. So given that the cumulative total is more than his regular monthly repayment, it's reasonable to assume the remaining number of payments left of Mr J's loan would be lower as a result of his cumulative overpayments.

First Direct have identified a shortcoming with the s.97A statement when an overpayment has been made. They've told me that a request for a PER letter is not a service that is often requested, so regrettably it seems that Mr J's request was overlooked on several occasions. They have said they are re-examining their procedures to make sure that prominence is given to the necessary action of issuing a s.97A letter when requested. First Direct have also confirmed to me that they are considering a solution to include any reduction of the term within the letter.

As First Direct are changing their processes to be able to issue the statement under s.97A upon request, I would not expect First Direct to be able to complete this without rigorous testing, otherwise the danger would be that incorrect information on statements could cause harm. But with that being said, I know the strength of feeling that Mr J has about how long the changes to First Direct's systems are taking. So I asked First Direct for an update of where they were in their journey to amend their systems.

First Direct told me that they are still working hard on the remediation required. They said they were currently completing validation tests on their calculator and reviewing the current PER letter format. First Direct said that once their testing is complete, the revised process will require sign off from their legal and compliance teams. They said they are looking at this matter as a priority, but they are currently unable to confirm a date for completion. So I hope this gives Mr J some comfort that First Direct are making changes as a result of the issues he's highlighted to them.

As a short term fix, First Direct have issued Mr J two PER letters. These are cumulative as opposed to separate statements as First Direct did not have the facilities in place to produce what Mr J wanted. While these don't show the remaining term, they do show interest that he

would have paid on the additional repayments over the duration of the loan, and the total amount that he owes on the date of the letter. While they don't show if the remaining term has been reduced, Mr J has not raised this point, so I'm not persuaded it has impacted him significantly, and it should be relatively easy to work out by dividing the outstanding balance by his monthly regular repayment.

I've considered what Mr J has said about how not receiving the PER statement has impacted him. I reached out to Mr J for further information about this. He's told me that as to his financial goals, he wanted to clear some of his most expensive debt, and to improve his credit score to get a mortgage. He said he intends to pay off his debts by also making overpayments. Mr J said he doesn't want to speculate how his financial decisions would have been affected if First Direct would have issued the statement in line with s.97A of the CCA, but it is certain that he would be able to determine the loan that costs him the most and make overpayments on that agreement until the balance tips to another credit agreement, to maximise the effectiveness.

While I can understand why Mr J wants the historical individual statements for each overpayment, I'm not persuaded that these would impact his decisions moving forward when the cumulative effect would be the same as what First Direct has manually produced. Mr J may strongly disagree with what I've said here, as if First Direct would have done what they should have done he would have received the statements individually with each overpayment, but moving forward, it would not be proportionate for me to ask them to issue historical individual statements which would show the same information as what the cumulative figures would show collectively.

Looking at the two PER letters which have been issued to Mr J, the statement dated 20 February 2024 which First Direct have asked our service to forward to Mr J shows his overpayments made up to that date. I can see that the other statement issued 6 June 2024 (which First Direct's system notes they've forwarded our service shows the letter was issued on 7 June 2024), also shows the overpayments up to that date.

Based on these two statements, Mr J would be easily able to calculate the interest saved as a result of him making the £10 overpayment between these two statements. I say this because the February 2024 statement shows he had made overpayments of £600, and First Direct said the interest that he would have paid on the additional repayments over the duration of the loan would have been £71.28 (which this figure also takes into account the £2,000 that credited the loan on 28 September 2023, which was then reversed on 25 October 2023).

The June 2024 statement shows the total overpayments of £610 and the interest that he would have paid on the additional repayments over the duration of the loan would have been £74.67 (which this figure also takes into account the £2,000 that credited the loan on 28 September 2023, which was then reversed on 25 October 2023). So the extra £10 payment Mr J made reflected in the two overpayment figures appears to have saved him £74.67 - £71.28) £3.39 of interest.

As First Direct are still working on the system issues this could take some time to be in place. In the meantime, if Mr J decides to make some overpayments, which for the reasons already highlighted may not fully comply with s.97A, I encourage Mr J to allow First Direct the time to do so because it's important they ensure the right information is provided as required. In the meantime, First Direct should at least continue to send the PER letters if Mr J requests them, and hopefully for the reasons I've explained, Mr J should be able to decipher the information he needs.

I've considered what would be a fair outcome for this complaint. Mr J himself has said he

doesn't want to speculate how his financial decisions would have been affected if First Direct would have issued the statement in line with s.97A of the CCA. There are things that Mr J may have been able to do to help mitigate what happened here, such as comparing the Annual Percentage Rate (APR) of each credit agreement he had, and making the overpayments with the highest APR first, but ultimately, I'm unable to say what he would have done if he did receive what he asked for.

As I've previously explained I'm unable to ask First Direct to change any of their processes/systems. So it's not within my remit to ask them to do this. But it is within my remit to consider compensation for distress and inconvenience here.

First Direct have let Mr J down on multiple occasions which include, but are not limited to, giving him incorrect information about the s.97A CCA statements, not sending him a statement that he requested in line with s.97A of the CCA, passing him through to multiple departments, not giving him clear information which has prompted him to spend a lot of time on the phone with First Direct, not raising the s.97A requests for him at times, issuing him an amortisation report with incorrect figures on it, telling him they could only issue an early settlement figure, telling him they had a process in place (but this didn't have all of the information required which needed to be on the statement, and some staff weren't aware of this) and they questioned why Mr J was keep making the s.97A requests, even though he was entitled to do so.

So I agree with Mr J that the compensation which has previously been offered does not reflect the impact that the issues had on Mr J. I'm persuaded that £500 compensation would be more reflective of the impact that the inconvenience and distress would have had on Mr J for the reasons given in the previous paragraph. So it follows that I intend to ask First Direct to put things right for Mr J."

I invited both parties to let me have any further submissions before I reached a final decision. First Direct accepted the provisional decision. Mr J made a number of points he wanted me to consider. In summary, he wanted to know why part of the outcome wasn't for First Direct to issue historical individual statements that were originally requested. He said that First Direct might have breached the Fraud Act 2006, Section 3, as they didn't disclose part of the debt which had already been discharged.

Mr J said that he should be compensated for his time and effort in resolving this issue for having to contact First Direct, and raising the issue with the FCA, our service, looking at legislation, and possible remedies. Mr J asked for £10 per hour as fair compensation.

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.

I've considered what Mr J has said about why I didn't ask First Direct to issue the individual statements. I addressed this in the provisional decision when I said the following:

"While I can understand why Mr J wants the historical individual statements for each overpayment, I'm not persuaded that these would impact his decisions moving forward when the cumulative effect would be the same as what First Direct has manually produced. Mr J may strongly disagree with what I've said here, as if First Direct would have done what they should have done he would have received the statements individually with each overpayment, but moving forward, it would not be proportionate for me to ask them to issue historical individual statements which would show the same information as what the cumulative figures would show collectively."

I've considered what Mr J has said about the Fraud Act. But I'm not persuaded that First Direct dishonestly failed to disclose the information to Mr J. I think it's clear there has been staff training issues which has resulted in Mr J being told incorrect information, and that First Direct haven't had a system in place to issue the statements that he requested in line with s.97A, but I'm not persuaded this was a result of them being dishonest.

I'm aware that Mr J has a separate complaint at our service regarding the discharge of debt on his overpayments. So as the complaint I'm looking into was regarding s.97 of the CCA, I'm unable to add any further comments on this point as part of this particular decision.

I've considered what Mr J has asked for in terms of compensation for his time and effort. But I must explain to him that our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator. We sometimes award compensation if we feel that a business has acted wrongfully and therefore caused distress and inconvenience to their customer over and above that which naturally flows from the event.

When recommending awards of compensation, we don't generally make awards based on specific units of time spent. Instead, we look at the situation and make an award as a whole – to include things like upset and stress as well as time spent. So I'm satisfied that £500 compensation is in line with what we can award Mr J, and it is fair for the reasons I've previously given.

In summary, Mr J's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. If Mr J is disappointed, I hope he understands my reasons.

Putting things right

In my provisional decision I said I intend to uphold this complaint. I said I intend to ask HSBC UK Bank Plc trading as first direct to pay Mr J £500 for distress and inconvenience. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint. HSBC UK Bank Plc trading as first direct should pay Mr J £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 October 2024.

Gregory Sloanes
Ombudsman