

The complaint

Mr H complains HSBC UK Bank Plc didn't provide him with copies of call recordings he requested under a Data Subject Access Request (DSAR).

What happened

I sent the parties a provisional decision in January 2025, in which I set out the following background information to the complaint and my provisional findings, as follows:

Mr H initially complained about the service he received during a series of calls to HSBC. This was subject to a complaint to our service with a final decision issued by an ombudsman in March 2025. Mr H also raised a separate complaint with HSBC when it refused to provide recordings of telephone calls related to this initial complaint under a DSAR.

Mr H made a request for several call recordings in late August 2024. Mr H said HSBC didn't provide these recordings within the agreed time scale and didn't provide all the recordings he requested. In addition, Mr H also complained HSBC later told him he should raise a further DSAR to obtain the missing calls.

Mr H explained he believed he had been verified in some of the calls and therefore didn't think HSBC were correct in refusing to provide these calls to him, under its own rules.

Mr H raised a second DSAR request for the missing phone calls in April 2025. HSBC agreed our service could consider this as a continuation of the complaint and didn't require Mr H to raise a further complaint. Mr H also expressed dissatisfaction with the communication he had with HSBC.

As a resolution Mr H wants HSBC to provide all the outstanding calls it has refused to and increased compensation for the distress and inconvenience this has caused him.

HSBC first responded to Mr H's DSAR request in late September 2024, stating it couldn't provide the call recordings from 28 June 2024 because Mr H hadn't passed security in these calls. HSBC said this was in line with policy. HSBC also asked Mr H to arrange a further DSAR through its contact centre.

HSBC wrote a further response in mid-November 2024. HSBC said it had found a 'number of errors ... in relation to the DSAR.' HSBC said it could have forwarded his DSAR email request, dated 29 August, to its DSAR team to process it, explaining they would then have taken the necessary steps to arrange for disclosure of the calls.

HSBC apologised for the service Mr H received on 20 and 23 September 2024 during contact with it on these dates about the DSAR. HSBC said it had provided feedback to the agent's managers.

HSBC said it had sent the information it could in response to Mr H's DSAR in early October 2024. HSBC explained as Mr H had not passed security for the other calls it could not provide them. HSBC admitted it hadn't sent the information by 29 September, as it should

have under data protection legislation, but explained it thought this was a service error rather than an error in processing the DSAR itself.

HSBC paid Mr H £100 in recognition of this issue.

HSBC refuted it had told Mr H he could have the calls it had previously refused if he raised a new DSAR.

Our investigator thought HSBC should pay Mr H an additional £150 compensation for the distress the poor service caused him. The investigator examined the call recordings and provided an opinion regarding the service and process Mr H experienced during these calls. They thought the service in these calls warranted a further award for the distress and inconvenience caused.

Mr H agreed with our investigator's recommendation on this point, HSBC did not.

HSBC explained why it disagreed with the investigator's recommendation, stating there hadn't been a banking error and the initial adviser had followed processes correctly. Mr H's telephone access had been blocked following his failure to pass security during the first call on 28 June, HSBC said it therefore couldn't provide subsequent calls as Mr H wasn't verified in these calls.

As HSBC disagreed with our investigator's recommendation this complaint has been passed to me to make a final decision.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I appreciate how strongly Mr H feels about his complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

Where evidence is incomplete, inconclusive or contradictory, I have to make decisions on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances.

Firstly, I am aware Mr H has previously complained to our service about the service he received in the initial and subsequent calls to HSBC on and after 28 June 2024. These issues were subject to a final decision by an ombudsman in March 2025.

This complaint is regarding HSBC refusing to provide copies of call recordings under data protection legislation and the service HSBC provided regarding the DSAR. I would assure both parties I have read through the case file in full and have also carefully considered the previous final decision issued by an ombudsman in March 2025.

As part of my investigation, I have also spoken to the ombudsman who wrote the previous decision before issuing this provisional decision.

The Dispute Resolution Handbook (DISP) sets out the rules under which our service operates. DISP 3.3.4A explains 'The Ombudsman may dismiss a complaint ...without considering its merits if the Ombudsman considers that: (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial

Ombudsman Service [FOS]’.

DISP 3.3.4B gives examples of complaints which may impair the effective operation of FOS. (3) states ‘where the subject matter of the complaint has previously been considered ... (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant).

I have considered the evidence available to the previous ombudsman; this clearly included the calls in dispute. I’m satisfied there hasn’t been any new material evidence provided by the complainant and, due to the issues at hand, I think it unlikely any such evidence is available. In summary, the calls are a matter of record.

I am therefore satisfied our service has already considered this aspect of Mr H’s complaint and issued a final decision on these matters. I therefore do not have the power to reconsider these matters in any subsequent decision because of the rules I have highlighted above.

I am therefore currently minded to dismiss this aspect of Mr H’s complaint regarding the service he received during the calls he made to HSBC in late June and early July.

I appreciate this is a significant deviation from the recommendation issued by our investigator and I would assure Mr H I have not come to this provisional conclusion lightly. I would also point out this is a provisional decision, so invite both parties to make any representation they wish to before I issue my final decision.

I am satisfied I can consider the issues regarding the DSAR, which I will now move on to.

I can see HSBC has confirmed it sent Mr H a series of calls in May 2025. HSBC has consistently said it won’t release other calls because Mr H wasn’t positively identified during them, and therefore disputes it needs to provide them as personal information under its legal obligations.

There are two aspects for me to consider. Firstly, whether I am satisfied Mr H wasn’t positively identified for each of the calls not provided. And secondly, whether it was fair and reasonable not to provide these calls taking into account the wider circumstances and data protection legislation. I’ve taken the General Data Protection Regulations (GDPR) into account when making my final decision on this complaint, as it is relevant law, but my role is to decide what is reasonable and fair.

I have listened to the calls not disclosed to Mr H, but provided to our service. HSBC has also provided its procedure for identifying customers using its telephone banking system to our service. Our service can’t ask businesses to change such practises and processes as such processes are commercial decisions the business is entitled to make based on its appetite for risk and its interpretations of data protection legislation.

Without getting into the merits of the service provided by HSBC, I have sought to identify whether Mr H passed security for each of the calls in question. HSBC highlighted five calls it hasn’t been able to send Mr H from 28 June. The first call was the call where Mr H didn’t pass security recorded as 1.17pm and resulted in his telephone banking access being restricted. There were then four further calls during that afternoon. Although these calls were lengthy, the situation remained constant throughout, Mr H’s telephone banking access had been restricted, and he would need to visit a branch with photo ID to unlock it. No identification was completed during these calls.

There was also a call on 9 July highlighted, where Mr H wasn’t identified and the call handler ended the call after struggling to take Mr H through security for over ten minutes.

Having listened to these calls carefully, I provisionally think HSBC has correctly identified calls where Mr H's identity wasn't established and decided not to provide these to Mr H.

Now moving on to the rationale for not disclosing these calls. Our test is whether this was fair and reasonable, but as I have explained, I have considered the wider legislative framework here.

Firstly, I can follow the logic of not disclosing calls to customers where they have not successfully verified the caller. In my experience, this isn't uncommon. Indeed, it is frequently the case in fraud and disputed transaction complaints where customers are refused access to calls when there is a dispute regarding the identity of the caller.

Whilst I can fully appreciate this is frustrating, it logically follows that customers who have not been identified cannot have access to personal banking information.

However, I am also persuaded on balance it was Mr H making the calls in question. I've considered these calls alongside calls on file where Mr H was identified, and I am satisfied these were more than likely made by the same person, Mr H.

HSBC has constantly said it won't provide calls where it hasn't positively identified the caller, I therefore need to balance whether this blanket policy was fair and reasonable in the circumstances, having concluded the above.

I must also consider the wider implications here. I am satisfied HSBC has followed its policy, and therefore hasn't made a mistake. So, for me to direct HSBC to take a different position would need to be persuaded its policy was unreasonable and unfair in these particular circumstances.

With regards to GDPR, and I appreciate Mr H has cited this legislation several times during his complaint, I think it is important to recognise whilst this legislation gives access to personal data held by organisations, but it also seeks to strongly protect customers personal information and prevent unlawful disclosure.

It is a fundamental requisite of telephone banking, for data protection purposes, that customers are identified before information is given. Whilst processes differ from bank to bank, the underlying principle is businesses won't act unless they are satisfied, according to policy, they are speaking to their customer.

Having thought about this carefully, I do not think it would be reasonable for me to require HSBC to disclose the information it has refused to. Fundamentally, I can see why an organisation, taking into account data protection requirements, would not want to disclose any information where it hadn't positively identified the individual involved. I also don't think it would be fair on HSBC to require it to do so.

Moving on to the other aspects of Mr H's complaint, I do agree that HSBC should have recognised Mr H's request for personal information earlier. I'm pleased to see HSBC recognised this, so this issue is not in dispute, and I agree this was poor service.

I can also see HSBC apologised for the poor service Mr H received during calls in September. Again, I am pleased HSBC recognised this should have been better. I was also pleased to see HSBC had arranged for feedback to be given to the agent's managers. This appears reasonable in the circumstances.

I have also considered the issues Mr H raised regarding being asked to resubmit the DSAR request. I can see HSBC has recently clarified this point. HSBC suggested Mr H was free to

make further DSAR requests at any time regarding these calls, but it was unlikely HSBC would change its position with regards to releasing them. I think this reflects Mr H's legal right under data protection legislation, although I do think HSBC could have clarified this earlier.

I haven't seen any evidence in the file which suggests HSBC advised Mr H he would receive these calls if he made a repeat request. Again, as this is a provisional decision I will happily consider any further representations either party wishes to make on this point.

I can see our investigator contacted the information Commissioner's Office (ICO), the guidance provided wasn't conclusive either way and suggested Mr H may wish to pursue a complaint with its office, where he would be able to set out his concerns in full and it would be able to assess the case in relation to their regulatory remit. To be clear, this option remains open to Mr H regardless of whether he accepts or rejects my provisional decision.

In the circumstances, I'm not provisionally persuaded HSBC needs to take any further action. I can see it has paid Mr H £100 for the poor service highlighted. I appreciate the issues have caused Mr H some distress and inconvenience, but this was limited to poor service and HSBC not meeting a deadline it should have. I am therefore satisfied the compensation paid is in line with what our service would expect in the circumstances.

I appreciate Mr H will likely be disappointed with my decision, but I trust I have explained in sufficient detail why I cannot reconsider some of the issues already determined previously by our service.

For the issues I can consider, I am satisfied HSBC has already done enough by apologising and paying compensation

My provisional findings and the parties' responses

HSBC accepted my provisional decision and made no further comments. Mr H didn't accept my provisional decision and raised a series of points for my consideration.

I am satisfied many of the issues raised by Mr H have been covered in full in the provisional decision, so I do not intend to repeat them here and would refer him to what I have already said. Some of the points he has raised are clearly answered in the preceding or proceeding paragraphs. However, I am happy to address some of the specific issues he raised to provide clarity where I can.

Firstly, I would assure Mr H I have listened to all the call recordings. I appreciate Mr H maintains he doesn't think I have, and I also appreciate he doesn't have the benefit of these calls, but I am satisfied my provisional decision accurately reflected the salient parts of these calls. I have listened again to the important elements of these calls today, and am satisfied the evidence I have presented above is accurate.

Mr H is dissatisfied with the position in the provisional decision regarding the ICO. Our service won't raise complaints with the ICO on Mr H's behalf, as I have said, if he wishes to take this issues regarding the DSAR up with the ICO he can. They are the regulator for such issues, and Mr H should approach them directly to raise a complaint. I maintain the guidance provided by the ICO to our investigator wasn't conclusive and explained there weren't any 'rules' regarding the issues at hand.

Mr H queried several times why I have used the terms fair and reasonable in my provisional decision, suggesting this wasn't the test I should be applying. This is the remit of how our service must make decisions set out in DISP 3.6.1. I would draw Mr H's attention to the

wider obligations the ombudsman is under and how we make decision in this section of DISP.

Many of the issues raised by Mr H were related to the service he received in the calls to HSBC. As I have said, I can't consider these complaints further for the reasons I gave above. I maintain this position.

With regards to HSBC suggesting Mr H would receive call recordings if he raised a DSAR, I am satisfied what I have said above accurately reflects the evidence. To be clear, there is no evidence on the file from HSBC that it would provide the calls if Mr H made a further DSAR submission.

Finally, I spoke with the previous ombudsman to consider whether some of the issues Mr H had complained about had already been considered by our service. This wasn't collusion, but an necessary part of my investigation into what had occurred previously to establish what I could consider in this decision, to ensure I was complying with my obligations under DISP as cited above.

Having considered the further submissions by Mr H I am not persuaded to change my provisional decision.

My final decision

For the reasons I have given, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 February 2026.

Gareth Jones
Ombudsman