

complaint

Mr L complains on behalf of D that HSBC Bank Plc did not honour an agreement he reached with it. Mr L says that HSBC promised to pay a direct debit to K if Mr L paid £3,000 in to D's business current account. Mr L also complains that the bank spoke to his wife without permission and revealed details of his account and credit rating.

background

In April 2013, D's business account with HSBC was overdrawn by about £2,200. The bank had given D an informal overdraft in order to pay a previous direct debit to K. But the bank wanted D to call it to discuss the situation with its account.

On 9 April 2013, Mr L contacted HSBC on behalf of D to find out whether a direct debit payment to K of about £3,500 would be honoured the next day. Mr L was told by the bank that he would need to pay in just over £6,000 to make sure that the direct debit was paid. Mr L said that he could not pay in that much money but instead offered to pay in £3,000 the next day.

The bank told Mr L that once he had paid the money in to D's account, he should contact the bank so that it could look at whether the direct debit could be paid.

Mr L called the bank the next day to find out whether the direct debit could be paid. But as he did not call it until after 3.30 p.m. the bank was not able to consider his request.

Mr L says that the bank broke the agreement that it made with him to honour the direct debit payment if he paid £3,000 in to D's account. The bank says that it did not agree to pay the direct debit. Instead it said to Mr L that he should call it once he had made the payment so the bank could see what it could do.

D wants HSBC to pay outstanding amounts to third parties in addition to compensation for breach of contract and trust. Mr L also asked HSBC to refund the £3,000 payment that he made but the bank refused as there were insufficient cleared funds in D's account to do this.

Mr L, on behalf of D, also complains that when he spoke with a member of staff later in the day on 10 April 2013, she told him that the direct debit would be paid the next day. Mr L understood that she was talking about the direct debit due to be paid to K. But the staff member was talking about another direct debit which was to be paid out to F, due to sufficient funds being in place.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate Mr L's sense of frustration but I broadly agree with the adjudicator's conclusions. I have listened to all of the call recordings that the bank has given to us. During the call that took place on 9 April 2013, Mr L said he could only pay £3,000 in to D's account. The member of staff told him that once he had paid this money in, he should call the bank to discuss the direct debit due to be made to K. The member of staff clearly says that he cannot give a guarantee that the direct debit will be paid but that the bank might be able to do something if he calls. The staff member also tells Mr L that he should give K a call to say that the direct debit may not be paid. I am not persuaded that the bank promised to pay the direct debit if Mr L deposited £3,000 on 10 April.

By the time Mr L called HSBC on 10 April it was past 3.30 p.m. so it was too late to consider whether the direct debit could be paid. In one of the calls, Mr L does say to the bank that he initially called the bank before 3.30 p.m. but that he had been placed on hold while his call was diverted to the appropriate team. But this does not change my view that the bank was not under any obligation to honour the direct debit as D's account was still overdrawn even after Mr L had paid in £3,000.

Mr L spoke to another member of staff on 10 April 2013 and she told him that there was enough money in the account for a direct debit to be paid the next day. She also told Mr L that another direct debit could be honoured but as it had already been returned unpaid, she suggested that Mr L contact the third party to arrange a cash or card payment as this would be quicker than if the bank resubmitted the direct debit itself.

The bank has apologised to Mr L for the incorrect information given to him by this member of staff. But on listening to the call that took place, I can hear that the staff member told Mr L that there was enough money in the account to pay a direct debit to F. She also said that there was enough money in the account to pay another business but that Mr L should contact the other business himself to arrange payment rather than the bank re-present the direct debit. Mr L appears to have misunderstood this call to mean that the bank would pay the much larger direct debit to K. This was not the case, as there not enough money in the account to do so.

I do not find that the bank has made any error so I cannot fairly require it to pay any compensation to D.

Mr L also says that the bank spoke with his wife without his consent and revealed details of his account to her. But the call recording shows that Mr L asked the bank to speak with his wife part way through his call to it. So I cannot reasonably find that the bank breached confidentiality by discussing Mr L's account with his wife.

my final decision

My decision is that I do not uphold this complaint.

Gemma Bowen
ombudsman