

## **The complaint**

Mr W – owner of a business (P) complains about the service he received from HSBC UK Bank Plc.

Mr W is represented by a third-party professional firm who I will call M.

## **What happened**

The circumstances of this complaint are well known to both parties, so I won't repeat everything in detail. Instead, I will provide a summary and focus on giving the reasons for my decision.

P has held bank accounts with HSBC for many years. In 2020 HSBC wrote to Mr W asking it for information to ensure its records were up to date. HSBC calls this a 'safeguarding' review and, if it is not complied with, HSBC said it would close P's accounts.

Mr W is elderly and not in good health. M says HSBC bullied Mr W with a continual stream of letters over several years when it was aware that authority had been given to it to act on Mr W's behalf under a Power of Attorney (PoA). And that HSBC closed P's accounts with no regard for the implications. M complained to HSBC on Mr W's behalf. To resolve the complaint Mr W would like HSBC to pay M's costs for dealing with this matter on his behalf and make a substantial award for distress and inconvenience.

HSBC looked into Mr W's complaint. But it didn't uphold it. It said that an initial safeguarding review found that Mr W's business partner had passed away and Mr W had been operating the account as a sole trader when the account was a partnership. So, it had had to start a new safeguarding review due to the change in the legal entity of the business.

It added that M was not a signatory on P's accounts so it could only deal with Mr W – hence, the correspondence was sent directly to him. But when it received authority from Mr W for M to act on his behalf in 2022, it was able to obtain the information needed and the safeguarding review was successfully completed.

M referred the complaint to us on Mr W's behalf. In doing so, M also complained about the way HSBC dealt with the complaint.

Our investigator looked into it. He noted that the letters were sent to Mr W as HSBC had found that P's legal entity had changed from a partnership to a sole trader. And because the account was still a partnership at the time, it couldn't deal directly with M as Mr W's PoA. He added that the letters were of a standard format and were intended to highlight the urgency of supplying the information requested. Overall, he didn't think HSBC had caused unreasonable delays or treated Mr W unfairly.

M didn't accept this outcome reiterating – in summary, that the constant stream of letters sent to Mr W – an elderly man in ill health, was inappropriate when a PoA was in place for HSBC to deal directly with them.

As an agreement wasn't reached, P's complaint was passed to me for a final decision. I issued a provisional decision as I was minded to reach a different overall conclusion than that of our investigator.

#### **What I said in my provisional decision dated 1 March 2024**

*HSBC's business account terms and conditions allow it to make reasonable requests for information from its business customers, and explains that if it's not received, it may lead to closure of the account. HSBC initially wrote to Mr W in early 2020 for information to complete a safeguarding review on P's account. I don't find its request was unreasonable.*

*However, it was around two years before this review was completed. So, I thought carefully about whether HSBC did anything significantly wrong that caused the delay in the review being completed and which caused Mr W a financial loss and/or material distress and inconvenience.*

*Having done so, I think it's important that we go back several years before the safeguarding review started. M says that P ceased to be a partnership when the other partner – Mr W's wife, passed away in 2007. And solicitors acting for Mr W and his wife following her death had notified HSBC in this regard. M also says that from 2019 they held a PoA to enable them to act on Mr W's behalf, so HSBC should have been dealing with them rather than Mr W directly.*

*It's not in dispute that P was originally a partnership and I've seen that statements issued prior to 2007 were addressed to both Mr W and his wife as partners in the business. But I've also seen that after 2007 statements were addressed only to Mr W. I'm satisfied that Mr W's wife (and business partner) passed away in 2007 and given the change in how the statements are addressed, I think it's most likely HSBC was told about Mr W's wife's passing.*

*And I've seen - in an email from HSBC to M dated 11 November 2020, HSBC appears to accept that while the statement name was changed, it hadn't completed the process of changing the account from a partnership to a sole trader. On balance, I think HSBC made a mistake in 2007 when it didn't - at that point, make the changes that were required to convert P's partnership account to a sole trader account.*

*In 2019, I've seen a note recorded on HSBC's records which indicates it did receive the PoA appointing M's representative as Mr W's attorney. The note says that HSBC couldn't accept the PoA as P's other business partner's authority was needed.*

*But, as mentioned above, I think by this time HSBC was aware that the other business partner had passed away and P's account should have always been set up as a sole trader account by this time. And had that mistake not happened in or around 2007, I think it's most likely that the PoA would have always been accepted in 2019.*

*I can't be sure what happened in 2019. But I've not seen anything to suggest HSBC followed up the submission of the POA or explained to Mr W or M why it thought it couldn't be accepted at that time. If it had been followed up, I think it's most likely Mr W or M would have confirmed that Mr W's wife had passed away. So, I think HSBC also missed an opportunity to get P's account set up correctly at this point.*

*Had HSBC made the account change either in 2007 or 2019, when the safeguarding review started in 2020, I think it's most likely it would have been completed promptly. I say this because when HSBC did get authority to deal with M, the safeguarding review was completed within a few weeks.*

*It's clear that from 2020 to 2022 HSBC sent Mr W a lot of correspondence about the review – when I find it should have been contacting M. And prior to this, I've seen that Mr W was required to attend meetings to get P's account converted to a sole trader account – and this involved an indemnity being required. Furthermore, HSBC temporarily suspended access to P's account – although I haven't seen enough to safely say this caused any adverse implications.*

*M says that Mr W has suffered a financial loss as he has incurred fees as a result of M dealing with HSBC since the first safeguarding review commenced. In principle, I find that HSBC are responsible for some of the fees Mr W has incurred as a result of M having to deal with HSBC over a prolonged period of time.*

*However, at this stage, I'm not going to make an award in this regard. While M has provided a verbal testimony about the fees incurred, I haven't seen any documentary evidence of the amount of fees Mr W has been charged and he's paid – for example, itemised invoices detailing the contact M made with HSBC. However, if M is able to provide this information in line with the deadline mentioned above, I will consider this and let both parties know my thoughts before reaching a final decision.*

*I don't agree that the letters HSBC sent Mr W were unreasonable. I'm satisfied the letters are standard letters that HSBC sends all its business customers from time to time. I've seen nothing which suggests Mr W has been treated differently to any other business customer where a safeguarding review is required.*

*That said, for the reasons given above, I find the letters should have been sent to M rather than Mr W. So, I accept that Mr W was caused some unnecessary distress and inconvenience – although, I have taken into account that Mr W has been shielded to some extent as M has been attempting to deal with safeguarding review on his behalf. I also accept that P's account being blocked for a short period of time would have been worrying – but I haven't seen anything to suggest this caused any adverse implications. Overall, for the reasons given above, I find that HSBC should pay Mr W £500 compensation for the distress and inconvenience caused.*

*I note M has commented on how HSBC handled the complaint that it referred on Mr W's behalf. But complaint handling is not a regulated activity and not something this service generally comments on. In any event, from what I've seen, M has handled the complaint on Mr W's behalf – so Mr W hasn't suffered any distress and inconvenience as a result of how HSBC has handled the complaint.*

I invited both parties to provide any further comments or evidence they wanted me to consider before reaching a final decision.

## **Responses to my provisional decision**

HSBC accepted my provisional decision.

M acknowledged receipt of the provisional and provided some further information about the fees Mr W had incurred. M also provided further detailed comments. In summary, M said:

- It would be helpful to know why HSBC didn't make the relevant changes to P's account in 2007 or soon after.
- HSBC missed another opportunity to reduce the length of time the safeguarding review took as M was given access to internet banking in 2020 and that wouldn't

have happened had the bank not been satisfied with who they were dealing with.

- The information HSBC asked for wasn't for safeguarding but for Anti-Money Laundering purposes which protects the bank not the consumer. And that had HSBC made Mr W aware of the purpose of the review it would have shortened the correspondence timescale.
- HSBC bullied Mr W when it sent a constant stream of letters to him directly and that the information being requested wasn't reasonable.
- HSBC insisted on an indemnity when P's account was changed from a partnership to a sole trader account which cost around £1,000.
- P's accounts were closed without explanation which is an issue being currently raised in the media. And in one reported case it took the consumer four months to find a new account provider.
- Both it and Mr W have been caused distress and inconvenience because of this matter and HSBC should pay £5,000 compensation to both it and Mr W.
- It keeps computer records of time spent working for Mr W, and it issues periodic fee notes. But the invoices aren't itemised, and not all the time spent on this issue has been recorded.

### **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 want to assure Mr W that I have read everything he and M have submitted. If I haven't mentioned something, or answered a particular question or point raised, it's not 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. This reflects the informal nature of our service. I've focussed on what I think the key issues are here – I've set out each one separately below. But, having done so, I've reached the same overall conclusion as set out in my provisional decision. I'll explain why.

### ***Changing P's account status***

As mentioned in my provisional decision, I find it most likely that HSBC had been told of Mr W's wife's passing in or around 2007, and that it should have arranged with Mr W to change P's account status at this point. I've also found that HSBC missed a second opportunity to do this in 2019 when the PoA was received. And I accept it's possible that had HSBC made the changes to P's account at either of these points the events that followed thereafter may not occurred to the same extent.

I appreciate that M and Mr W would like to know why the account change didn't happen sooner than it did. But given the time that has passed, I don't find it likely that any further investigation would get to the bottom of it or change the outcome of this complaint. Overall, I think it's most likely that the mistake was a human error at the time. But I'm persuaded that Mr W was caused some distress and inconvenience as a result which I will refer to again later in my decision.

### ***HSBC's safeguarding process***

M has set out what it thinks a safeguarding review should look like based on its understanding of safeguarding in an educational setting. But here HSBC's safeguarding is a

financial review and I find it is for HSBC to decide what information it requires to meet its requirements and any regulatory obligations connected to any checks it needs to make.

HSBC account terms and conditions makes provision for information to be provided on request and I've seen on its website that HSBC sets out that any account can be subject to its safeguarding process and the information it needs is dependent on the type of account held. I'm satisfied the initiative was introduced for the protection of both consumers and HSBC. So, I don't think HSBC did anything wrong when it requested information about P's account.

While I acknowledge that in Mr W's case this process took longer than it should have, even if P's account status had been changed back in 2007 (or 2019), I think it's most likely that HSBC would have still undertaken a safeguarding review in 2020. And it follows that I'm persuaded that Mr W would have always had to provide the information requested.

### ***Sending letters to Mr W directly***

M says that the letters sent to Mr W amounted to bullying. But - for the reasons given above, I don't find that the information HSBC asked Mr W to provide was unreasonable. And I've found the letters to be of standard nature and not dissimilar to the information on HSBC's website. So, I don't find that Mr W has been treated any differently to any other consumer who holds an account with HSBC.

But, also for reasons given above, I acknowledge that the letters should have been sent to M rather than Mr W directly. And I accept that receiving these letters would have concerned Mr W and that he suffered distress and inconvenience that could have been avoided had the letters been sent to M. Again, I'll refer to this later in my decision.

### ***Account closure***

I acknowledge that HSBC sent several letters saying P's accounts would be closed if the information it needed wasn't provided. Given the purpose behind the checks HSBC was carrying out, I don't find it unreasonable that HSBC set out the consequences of what could happen if the information it asked for wasn't provided.

In any event, I've not found that HSBC closed P's accounts. Rather, from what I've seen, access to the account was withdrawn at the end of March 2022. But I've also seen access was reinstated in early April. Overall, while I've seen that M was dealing with HSBC to get access to the account reinstated, I haven't seen enough to safely conclude that Mr W or P suffered a direct financial loss as a result.

M has referred to cases mentioned in the media where consumers have had their accounts closed without explanation. But here, Mr W and M were aware of why HSBC had withdrawn access to P's account – the information it asked for hadn't been received. So, I'm not persuaded the cases M has referred to has any bearing on this complaint.

M has also referred to a specific example where it took the account holder several months to find a new account provider. I do understand that M is concerned about what this could have meant to Mr W if P's accounts had been closed. But as mentioned above, access to P's accounts was reinstated relatively quickly once HSBC had received the information it needed. So, I'm not persuaded the case M has referred to here has any bearing on this complaint either.

### ***Fees and costs***

Since issuing my provisional decision, M has provided some more information about the fees it charged Mr W for the period this matter has been on-going. This indicates the fees charged to Mr W amount to approximately £56,000. M has said it thinks HSBC should pay 15% of this amount.

For me to make an award in this respect I need to be satisfied that the costs are real, quantifiable, a direct result of a mistake on HSBC's part and were a reasonably foreseeable consequence of any mistake it made.

With the above in mind, along with all the circumstances of this complaint - including Mr W's choice to employ a professional firm to deal with his financial matters, I've given further consideration to his claim for the fees he's incurred. Having done so, I don't find that I can fairly award the fees Mr W has incurred for the following reasons.

A detailed breakdown of the fees M charged Mr W for dealing with this specific matter hasn't been provided. From what M has said the fees it charges Mr W cover a range of work it carries out on his behalf and this can be seen in the copies of the invoices M has been able to provide. These list various items of work carried out during the period the invoice covers, but the overall bill is not itemised to show how much each item of work cost. So, while I've no reason to doubt that Mr W has been charged these fees and I'm persuaded that some fees have been charged to Mr W because of this matter, I'm unable to quantify what those fees are.

Even if M was able to provide a more detailed breakdown, I can't rule out that some fees wouldn't have always been incurred. I've found that HSBC was entitled to carry out its safeguarding review and it seems M would have always been employed by Mr W to deal with this matter. Additionally, from the limited information provided, I also can't rule out that some fees may have been charged in relation to other work - not directly related to this matter, that M carried out with HSBC on Mr W's behalf. For example, M has told us that it had access to P's accounts for on-line banking purposes.

As I've mentioned earlier in my decision, I think that HSBC did make some mistakes in relation to P's accounts. But I'm persuaded that some - if not all, of the fees he's been charged because of M's involvement could have either been mitigated or weren't a reasonably foreseeable consequence of the mistakes HSBC made. Generally, I don't consider it to be usual for a sole trader to employ a professional firm to deal with such things as a safeguarding review. Even if Mr W was unable to deal with such matters himself, he could have - for example, arranged for a friend or family member to act on his behalf. But he chose to use a professional firm knowing the cost of its services.

M has also provided some information detailing the fees Mr W has been charged in respect of it dealing with the referral of his complaint to this service on his behalf. But referring a complaint to this service is free of charge to consumers. And I find Mr W could have avoided these fees by referring the complaint to us himself or with the help of a friend or family member.

Overall, I'm not persuaded it would be fair or reasonable to tell HSBC to pay 15% of the fees Mr W has been charged.

M has also mentioned the cost of the indemnity Mr W had to obtain when HSBC made the changes to P's account from a partnership to a sole trader. M has suggested the cost of this was around £1,000, but no evidence of this has been provided. Because of this and as I can't rule out that Mr W wouldn't have always incurred some costs in changing the P's account after his wife had passed away (had the account been changed at that time), for the same reasons as above, I can't make an award here either.

### ***Distress and inconvenience***

M has said that HSBC should pay compensation for the distress and inconvenience caused to it. But this service can only award compensation to an eligible complainant – in this case, that's Mr W. So, I won't be awarding compensation to M.

In my provisional decision and above I've acknowledged that Mr W has been caused some distress and inconvenience because of this matter. But I'm persuaded that - to some extent, Mr W has been shielded from much of the issues that arose here as M has been dealing with HSBC on his behalf. And as part of the safeguarding review Mr W would have always needed to provide some information to HSBC. Overall, for the reasons given above, I see no reason to depart from my provisional decision in this respect. I find that HSBC should pay Mr W £500 compensation for the distress and inconvenience caused.

### **My final decision**

For the reasons given above – and in my provisional decision, I uphold this complaint.  
our text here

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 23 April 2024.

Sandra Greene  
**Ombudsman**