

The complaint

Mrs P complains that HSBC UK Bank Plc (“HSBC”) failed to make reasonable adjustments for her disabilities when dealing with her ISA account. She says HSBC failed to properly contact her before it sold shares held within the ISA account and transferred the proceeds to a cash ISA.

Mrs P is being represented in this complaint by her daughter and so I will make reference to her whenever appropriate.

What happened

In November 1994, Mrs P invested in shares held within an ISA wrapper with HSBC. HSBC wrote to her in March 2021 to explain that it was no longer accepting investments into this ISA. HSBC wrote again to Mrs P in July 2021 to explain that it would be closing this ISA product. This letter explained that Mrs P could either apply for a new stocks and shares ISA account with HSBC and transfer her holding, transfer the shares into another ISA account or instruct them to close the ISA and withdraw the money. It also explained that if Mrs P didn't provide an instruction by 2pm on 29 September 2022, it would sell the shares and open an HSBC cash ISA, and transfer the proceeds into this.

HSBC sent Mrs P a further two letters explaining the same in August 2022 and September 2022. However, as Mrs P didn't respond and provide HSBC with any instruction, it wrote to her on 6 October 2022 explaining it had sold her shares and would transfer the proceeds into her new cash ISA on 17 October 2022.

Mrs P's daughter has explained that her mother has macular degeneration and dystonia, as well as having hearing issues which means she has difficulty using a telephone. In addition to this, in December 2022, she was unfortunately diagnosed with Alzheimer's disease. Mrs P's daughter has also made us aware that her mother was on the build up to a heart valve replacement operation at the time. It was around this time that Mrs P's daughter became her mother's lasting power of attorney and also discovered the letters from HSBC.

Mrs P's daughter complained to HSBC on her mother's behalf, as she felt HSBC hadn't done enough to check her mother's health. She said HSBC was under a legal duty to make reasonable adjustments such as using a different form of contact and quoted the Equality Act 2010. She also said HSBC ought to have been aware her mother was 93 years old and so it could have tried phoning her. Mrs P's daughter believes her mother would have transferred the shares as she holds the same shares in an ISA account with another provider.

HSBC considered the complaint but explained that it didn't think it had acted unfairly. It said it was unaware of Mrs P's medical issues and confirmed no power of attorney had been registered on the account. If there had been, it said it would have written to Mrs P's daughter instead of Mrs P. Despite it saying no error had been made, HSBC did offer £200 compensation as a goodwill gesture.

Mrs P's daughter didn't accept HSBC's answer as Mrs P had made a loss trying to rectify HSBC's actions, missed out on a dividend payment, and suffered distress and inconvenience as a result. So she referred the complaint to this service for an independent review.

An investigator at this service considered the complaint but didn't think HSBC had acted unfairly. In summary, they said:

- Only a court can decide whether a firm has breached the Equality Act 2010.
- They acknowledged that a firm is required to make reasonable adjustments for those with protected characteristics, which includes disability.
- HSBC has a policy in place to identify vulnerable consumers, but this requires contact with them. As Mrs P hadn't had contact with HSBC for over ten years, it wasn't aware of her disabilities.
- They didn't think it was fair or reasonable to expect HSBC to provide reasonable adjustments for something it wasn't aware of.
- They were satisfied that HSBC had written to Mrs P to make her sufficiently aware of the actions it would take.
- HSBC were closing an entire product here and it has confirmed that it had to contact thousands of consumers. So they didn't think it was reasonable for HSBC to contact those who didn't respond to letters by telephone.

Mrs P's daughter didn't accept the investigator's findings. In summary, she said:

- HSBC never made her mother aware of its policy for dealing with vulnerable customers. Her mother has never used a computer as her dystonia means she cannot effectively use a keyboard. Had she received and read the policy before her disabilities began to substantially affect her, Mrs P's daughter felt her mother could have contacted HSBC and told it about her health issues.
- HSBC ought to have contacted her mother regularly to make sure she did not need assistance given it was aware of her age.
- The burden should never be on the vulnerable person to make contact and explain their difficulties – it is for the service provider to make reasonable enquiries.
- It is not enough to give clear repeat information in letters to a person not able to understand them or act on them because of their disability.
- HSBC was able to make itself aware of her mother's disabilities by reasonable enquiry but failed to do so. A call to her would have made HSBC aware of her health issues.
- She asked HSBC to tell her how many people took out the ISA and how many people did not respond to the correspondence, as she felt these factors were highly relevant to determine how reasonable it was for HSBC to call consumers who hadn't responded.

As no agreement could be reached, the complaint has been passed to me to decide.

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 understand Mrs P's daughter says she feels HSBC has discriminated against her mother given the problems she experienced. I can understand why she feels this way but having looked at all the evidence I don't think HSBC has done so. Nor do I think HSBC has acted unfairly or unreasonably. I hope that it helps Mrs P and her daughter to know that someone

impartial and independent has looked into their concerns.

It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not HSBC has breached the Equality Act 2010, we're required to take this act into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

The Equality Act 2010 says that businesses have a duty to make reasonable adjustments for customers who are placed at a substantial disadvantage due to their disability. However, in law, HSBC is only required to make adjustments which are reasonable, and ones that don't fundamentally alter the nature of its service. That's relevant law and I've taken it into account when reaching my decision.

I can see that Mrs P's daughter has told our service that her mother is registered disabled. But HSBC has said Mrs P never made it aware of this until December 2022 when the complaint was raised. I understand Mrs P only ever held a savings account with HSBC, in addition to the ISA in question. And that this savings account was closed around ten years ago. HSBC says it had no direct contact with Mrs P during this time. I appreciate Mrs P's daughter says she expected HSBC to contact her mother more regularly, especially considering her age. However, I don't agree. I say this as HSBC hasn't had any banking or advisory relationship for it to need to contact Mrs P regularly and so it hasn't had an opportunity to identify Mrs P's vulnerabilities. So I don't think it would be fair for HSBC to be expected to make any reasonable adjustments when it wasn't aware of the need to do so. I appreciate Mrs P's daughter thinks the onus should be on the firm to reach out and that the burden should never be on the vulnerable person to do so. Whilst I agree that under the Equality Act 2010, HSBC has an anticipatory duty which means it needs to make sure that it foresees barriers before they cause a problem for consumers, this relies upon HSBC being aware of a consumer's disability in order for it to anticipate any barriers. And in Mrs P's case I'm satisfied HSBC wasn't provided with any information regarding her disabilities to understand the barriers she faced and the reasons why it was required to depart from its usual course of business.

HSBC sent several letters giving Mrs P notice of the changes it was introducing and allowing her time to give an instruction. As it had no knowledge of Mrs P's need for reasonable adjustments, I don't think it needed to do anything more. I appreciate Mrs P's daughter feels HSBC ought to have called Mrs P when it hadn't received an instruction from her. However, I don't think it would have been reasonable for HSBC to do so. Not only because of the potential volume of consumers it may have needed to contact by telephone, as the investigator alluded to. But fundamentally because HSBC wasn't aware of Mrs P's disabilities. HSBC had given several options to Mrs P, which included not responding to the letter and having the proceeds of the share sales transferred to a cash ISA. HSBC had no indication of Mrs P's investment intentions and so I think it was entirely feasible for HSBC to conclude that Mrs P was happy to have her shares sold and the proceeds be transferred to a cash ISA. I think it would possibly be a different scenario had HSBC not given this option.

Taking into account all of the above, I can't fairly conclude that HSBC has treated Mrs P unfairly. I acknowledge that HSBC has made Mrs P a goodwill gesture offer of £200 and so if she wants to accept this she would need to contact HSBC directly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 20 December 2023.

Ben Waites
Ombudsman