

The complaint

The trustees of a trust, who I'll refer to as Mr and Mrs B, complain that HSBC UK Bank Plc initially set up the trust bank account incorrectly, which has caused them inconvenience.

What happened

In the 1980's, Mrs B's parents – Mr D and Mrs B - set up two trusts with HSBC, which I'll call 'D&B' and 'B'. When the two trusts were set up, one bank account was opened in the name of B and another bank account was opened in the name of D&B.

Each trust was invested in a bond held by a third-party and both trusts made a monthly payment – one into the B account and the other into the D&B bank account - which Mrs B then distributed to the beneficiaries. On a yearly basis, HSBC has contacted Mrs B about the trust as part of its safeguarding review – which Mrs B says has caused inconvenience due to the way the D&B account was set up.

In September 2019, the bank identified a wider issue with the way the D&B account was set up and undertook a wider safeguarding review. Between September and November, the bank told Mrs B that without all the information needed to complete the review the D&B account would be closed in December.

Discussions between Mrs B and HSBC continued throughout the three-month period about whether the account could remain as it was, and there was confusion from the bank about which names the account could be in. In November the bank said that the monies from the two different trusts needed to go into an account in the name of that trust. Mrs B was confused by this as she thought the trusts already had separate accounts, so she was unsure what action she needed to take and questioned how the accounts were originally set up.

After reviewing the account again, HSBC then told Mrs B that the D&B account couldn't remain as it was, and she would need a separate trust account for Mr D and Mrs B as the account couldn't be in joint names. The bank said she could change the D&B account into Mr D's sole account – as Mrs B already had a trust account - or open a new account for both trusts. HSBC then suggested Mrs B close the D&B account, which she did.

However, after taking this action, the investment company which held the trust bond advised it couldn't pay the monthly income into an account solely as D as the trust was in the name of D&B not Mr D and Mrs B as the bank had suggested. As an interim measure it agreed to pay the D&B trust monies into the B trust account as this was still active.

HSBC agreed to extend the account closure date and from December 2019 to February 2020, the bank wrote to Mrs B to explain it needed further information about the account as it wasn't clear which option she wanted to go ahead with. HSBC reminded Mrs B that it couldn't continue to have the monthly income from both trust bonds paid into the B trust account - and gave notice that the account would be closed in March 2020.

In error, HSBC told Mrs B that the D&B account needed to be closed – which she did. But

when Mrs B tried to open a new account, she was unable to do so and made a complaint. This has also meant that both trust payments are now made into B's account as it is the only account open – causing further issues. When she didn't receive a satisfactory response from the bank, Mrs B asked this service to look into the complaint.

HSBC didn't uphold the complaint. The bank said it had told Mrs B since 2019 that each trust needed a separate account, so the D&B account had been closed correctly. HSBC also said that as Mrs B hadn't opened the new account at the time it suggested, as it was no longer offering trust accounts, she'd need to open an account elsewhere. The bank said that its safeguarding reviews were part of its regulatory requirements, and Mrs B had already received a significant amount of compensation for previous inconvenience caused by this. And on this occasion, there hadn't been a bank error so it wouldn't be taking further action.

Our investigator didn't recommend the complaint be upheld. She agreed that HSBC could have communicated better, had given Mrs B incorrect information at times, and caused Mrs B inconvenience – but she said the bank had paid £1,800 compensation for these errors which was enough to put things right. She also said it was reasonable for HSBC to carry out its safeguarding review and no longer offer the trust account as this was a commercial decision for the bank to make.

Mrs B didn't agree. She said the compensation had been paid in 2017 for previous related issues, but the bank had continued to cause issues with the trust account. So she asked for an ombudsman to review the complaint and the case has been passed to me to decide. I issued a provisional decision on 4 July 2022. I said the following:

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

It's not disputed by either party that HSBC made a mistake when it set up the trust accounts. The bank says it apologised to Mrs B and paid her £1,800 for the inconvenience related to this, and although this payment was made in 2017, the additional points Mrs B has raised since then, stem from this. But I don't agree, I'll explain why.

HSBC has explained that it needed to undertake a safeguarding review of the accounts to ensure it was complying with its regulatory obligations, and I think it was reasonable for the bank to do so. However, the issue with the account was raised in 2019 so I think it's reasonable to think that the bank could have made a record on the trust account of what had happened in November 2019, so Mrs B didn't have ongoing issues with the bank whilst this was under review.

I've seen that in September 2019, HSBC contacted Mrs B about the trust accounts as part of its safe-guarding review. Mrs B says that she was told that one of the trust accounts had been set up incorrectly by HSBC as it was in joint names – and could only be a sole name. The bank said it had referred the account for a legal review to see if it could make an exception under the circumstances, but due to the nature of the trust, this wasn't possible. But I've looked at the trust account information provided by both parties, and it appears the account was set up in the name of the D&B discretionary trust – not in the joint names of the individuals who had set up the trust, as HSBC had said.

From September until the end of November Mrs B received numerous letters asking her for information about both trusts – but Mrs B didn't understand what was being requested as she believed the two trust accounts had each been set up in the name of the trusts. Mrs B says she repeatedly asked HSBC what needed to happen, but

she didn't get a satisfactory response. I've seen that Mrs B had to make numerous calls and send emails to try and resolve the issue – including repeatedly visiting the local branch for assistance.

In January 2020, it appears that HSBC incorrectly advised Mrs B that she should close the D&B account in joint names and pay the monthly income from both the trust bonds into the other account in B sole name. Mrs B duly did this in February 2020. I've asked the bank why Mrs B was told the account was in joint names, and, if it needed to be in a sole name as the bank had said, why she wasn't simply told to change the existing account. But the bank hasn't been able to explain this and has simply said the account name needed to match the name of the trust.

Once Mrs B passed on the new account details in B's sole name to the investment company overseeing both the trust bonds, it said wasn't able to credit an account which didn't match the name of the trust - which validated Mrs B's belief that the account was in the name of the trust initially. However, when Mrs B passed this information on to HSBC, the bank said it was no longer offering trust accounts and couldn't reopen the original account. HSBC said Mrs B would need to look elsewhere for an account. I understand this caused Mrs B further distress and inconvenience as she needed to be able to pass the trust monies on to the beneficiaries and was worried about how she would do this.

When closing an account, the bank's terms and conditions say that it can do so by giving two-months' notice. In this case, it wrote to Mrs B in November and December 2019 for further information and explained the account would be closed if she didn't provide the requested information. It then wrote to her again in January and February 2020, saying the account would be closed on 20 March 2020. So the bank did give the notice it required, but I don't think it treated Mrs B fairly as it repeatedly threatened to close the remaining trust account – despite acknowledging the account was operating incorrectly due to its error.

I understand HSBC has told Mrs B it no longer offers trust accounts and that she'll need to open a new trust account for D&B elsewhere. I recognise this is frustrating for Mrs B, but this is a commercial decision the bank is entitled to make. And I've not seen anything that leads me to think that HSBC's decision to do so was unfair or unreasonable. However, I think the bank needs to do more in this case to put things right.

Due to the bank's actions to this point, Mrs B has now been left in the position where both trust's monthly incomes are being paid into the B trust account. However, this is an issue for HSBC as the bank says this doesn't meet its procedures which only allow money to be paid into a trust account if the proceeds are coming from a trust of the same name. So I think it's reasonable that the bank wants to resolve this as quickly as possible.

Looking at the existing B account held with HSBC, it appears this is currently set up as a business current account. Although I acknowledge HSBC is no longer able to offer trust accounts – or accounts on the same basis - I think it would be reasonable for the bank to open a new business current account for the D&B trust so that each trust has its income paid into its own account. In the short term, this should prevent any further safeguarding review requirements for HSBC or Mrs B. I understand there is a monthly charge for this account, so I think it would be reasonable for the bank to provide Mrs B with six-months free banking to allow her to decide if she wishes to remain with HSBC or look elsewhere for a trust account as the bank has suggested.

I think it's clear that Mrs B has been caused distress and inconvenience by HSBC since these concerns were raised in September 2019. Mrs B has spent several years being chased for account information she'd already provided about the names on the trust, been given incorrect information, repeatedly contacting the bank in response to their letters about account closures and been left in a position where she now has to look elsewhere for a trust account as HSBC don't offer these accounts. So for the reasons I've outlined, I think HSBC should pay Mrs B a further £750 compensation.

I invited Mr and Mrs B and HSBC to give me any more evidence and information they wanted me to consider before issuing my final decision. Mr and Mrs B accepted the decision. However they told us that when HSBC had changed the trust account to a business account, the bank began charging them a fee, and because of this they'd moved the trust accounts elsewhere. So they asked if they could have a refund of six months fees that they'd already paid on the account, rather than to look for a new account elsewhere as they'd already done this.

HSBC accepted the provisional decision. I then provided the bank with Mr and Mrs B's response to my provisional decision. I asked HSBC if it would be prepared to refund six months of previous account fees, rather than future account fees, as Mr and Mrs B had already found a trust account elsewhere and moved their account as suggested by the bank. HSBC confirmed it would accept this to settle the complaint.

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.

Having done so, as both Mr and Mrs B and HSBC have responded to say they accept my provisional decision, I see no reason to reach a different conclusion other than the date the refund of fees is applicable to.

So this final decision confirms the findings set out in my provisional decision with the minor change accepted by both parties that the refund of fees will be the previous six months of HSBC account fees - rather than future fees - as Mr and Mrs B have already moved their trust accounts whilst the complaint has been with this service.

My final decision

My final decision is that I uphold this complaint. I instruct HSBC UK Bank Plc to:

- pay Mr and Mrs B £750 compensation for the distress and inconvenience caused, and
- refund six-months of account fees charged on the 'B' trust business account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 19 August 2022.

Jenny Lomax
Ombudsman