

The complaint

Mr M, a director of a company, which I will refer to as Z, complains on its behalf about the sale of the funds in its Select Investment Funds (SIF) Account by HSBC Bank Plc (HSBC) in December 2020.

Mr M says he requested a transfer to a new provider and his representative provided all of the information required by the date specified, but HSBC failed to complete the transfer resulting in Z incurring an additional tax payment. The firm representing Z also says that HSBC didn't give it an opportunity to rectify any issues with the paperwork.

What happened

In September 2020 HSBC wrote to Z, via Mr M, to inform it that HSBC was closing its SIF investment platform. HSBC said it was no longer able to offer that account or a similar product within HSBC. It set out the options available to Z and asked Mr M to inform HSBC of the option he wanted to take before the deadline of 27 November 2020.

It said if Mr M didn't let it know the option he had chosen by 27 November 2020, it would close the account by selling the funds within the investment on 11 December 2020 and hold it as cash, unless instructed otherwise.

On October 2020 HSBC wrote to Mr M again and reminded him of the deadline and the options available to him.

Mr M then instructed a firm to handle the transfer of the funds in Z's SIF account to a new provider, which was one of the options available to him.

In November 2020 HSBC wrote to Z, via Mr M, for a third time and reiterated what it had previously said about closing the platform, his available options, and the deadline for it receiving a valid instruction in respect of the account.

On 16 November 2020 Mr M and Z's representative contacted HSBC to ask about the requirements for providing authority to deal with the account.

On 26 November 2020 HSBC received a letter from Z's representative dated 18 November providing authority for the representative to receive information and act on Z's behalf.

On 27 November 2020 HSBC received two documents in respect of Z's account. The first was dated 25 November 2020 and entitled "Request for GIA Investment Information." The second was an instruction for an asset transfer signed by Mr M on 23 November 2020.

On 2 December 2020 HSBC wrote to Z's representative acknowledging the letter of authority.

On 9 December 2020 HSBC wrote to Mr M and said it had received an instruction in respect of the SIF account but it was unable to action the instruction, as it was already in the process of selling the investment holdings and closing his account.

On 11 December 2020 it sold the funds in Z's account and HSBC then contacted Mr M on 17 December 2020 confirming it had sold the holdings and asking for details of where he wished the cash proceeds to be paid.

Z's representative complained to HSBC on Mr M and Z's behalf. It said it had provided the relevant documents by the deadline and HSBC had agreed, in phone calls leading up to that date, that it had received the documentation it required in order to progress the transfer.

The representative also said he had been informed in a telephone call on 27 November 2020 that the transfer would go ahead.

Z's representative said HSBC had then sold the investments without any further contact before doing so. So, it said HSBC hadn't given Mr M a chance to rectify any issues with his documentation.

Z's representative said that it had incurred an additional tax liability as a result of the sale of the investments.

HSBC upheld the complaint in part. It didn't agree that it had acted incorrectly in respect of the sale of the investments, as it said it hadn't received a valid transfer instruction by the 27 November deadline. HSBC said the first page of the letter it received on that date stated it wasn't an instruction to sell or transfer.

However, it accepted that incorrect information had been given to Z's representative in the phone call of 27 November, which led him to believe the transfer was going through. So, it offered £300 for the inconvenience caused to Z as a result of the miscommunication.

Mr M disagreed with HSBC and his representative referred Z's complaint to our service on his behalf. He said that HSBC had chosen to withdraw the SIF platform and it had written to Mr M in September 2020, at a time when he was dealing with various matters resulting from the global pandemic. So, it said Mr M was not in a position to respond at that time. At the end of October 2020, Mr M had instructed their firm to handle the transfer, following receipt of a reminder letter from HSBC.

The representative said they had sent the relevant forms to HSBC and in the lead up to the 27 November deadline, he had been in direct contact with HSBC to make sure that the forms had been received within the time limits set. The representative said HSBC confirmed on several occasions during phone conversations, that the forms had been received within the set time frames and that notes had been added to the HSBC file and it had confirmed that the transfer would take place.

The representative complained that no further contact had been received from HSBC until Mr M received correspondence from it informing him the investments had been sold. He said HSBC should have contacted him, or Mr M, before the sale took place.

The representative said it had then been in contact with HSBC and had been informed the investments had been sold by mistake. He said HSBC then subsequently informed him the sale of the investments was irreversible and that a complaint would need to be made to consider any financial loss.

The representative said a complaint was made to HSBC over the phone and in that call, he indicated the loss was about £10,000 of additional tax liability. However, HSBC didn't uphold the complaint in full and £300 was offered, which the representative said wasn't fair in the circumstances.

Our investigator considered Z's complaint but didn't think it should be upheld.

He noted that HSBC had made the decision to withdraw the SIF product which he considered it was entitled to do. The investigator said it wasn't disputed that HSBC had sent Mr M a letter and reminders informing him that he needed to have provided it with a transfer form, by 27 November 2020. He considered the documentation received by HSBC on 27 November 2020 and noted that while it did contain a transfer form, there was a clear statement in bold stating that it wasn't an instruction to sell or transfer assets. So, the investigator didn't think it was unreasonable that HSBC hadn't treated this form as a transfer request.

The investigator took into account the incorrect information provided in the 27 November phone call. He noted that HSBC had acknowledged and apologised for that error and he considered the £300 compensation offered to be fair and reasonable in the circumstances.

The investigator didn't think that if the correct information had been given out and HSBC had indicated that it didn't consider the documents sent to be a valid transfer request, that it would have changed the outcome. Because the forms were received on the day of the deadline and the phone call also took place on that day. So, he didn't think Z's representative could have sent another request in time.

Z didn't agree with our investigator's conclusions. Its representative explained that both forms: the initial asset Transfer instruction form and the transfer form, were sent at the same time.

He said it was the policy of the third -party provider to first send the initial Asset Transfer form, to assess what stocks or funds need to be transferred and confirm that they could be held on its platform. Z's representative said he already assessed this with the new provider and the relevant fund was available, but the new provider still had to complete its processes in order to adhere to its internal compliance.

The representative said that all procedures were followed but the new provider worked with them to make the transfer happen immediately, by also sending the transfer request before the deadline date.

He said this was fully explained to HSBC before the deadline, on the deadline and after, and at all times he was assured by HSBC that all paperwork had been received in time and was all in order for the transfer to be completed. So, the representative said HSBC had taken away the opportunity for them to rectify any issue.

The representative said, in his view, the misinformation from the phone calls had a much greater impact than the investigator had concluded. He acknowledged he had made it clear to Mr M that it was going to be very close to achieve all the work within the deadline. However, he said they had completed everything HSBC had requested, and HSBC had confirmed to them it had received all it needed.

As no agreement could be reached Z's complaint was referred to me for review.

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 appreciate it would have been disappointing for Mr M to be informed by HSBC that it was no longer going to provide Z's SIF account. However, I agree with the investigator that HSBC was entitled to make the commercial decision to stop providing this particular platform to its customers. Having said that, I think it had to manage the administration of this in a fair and reasonable way by giving Z plenty of notice and clearly setting out the options open to it. I also think the time it gave to its customers to respond had to allow them sufficient time to consider their options.

Was sufficient notice given in the circumstances?

The first letter was sent to Z, via Mr M, in September 2020 and informed it that if Mr M wanted to transfer the funds, the deadline for HSBC receiving an instruction to transfer was 27 November 2020. So, I think that was sufficient notice to enable Mr M to consider what he wished to do and to take any actions necessary. I understand that Mr M was under a fair amount of pressure at the time because of the impact of the pandemic, but as HSBC was giving him months rather than weeks, I don't think this was unreasonable in the circumstances.

I also note that there were then two further reminder letters sent in October and November to prompt Mr M to take action if he hadn't already done so.

Were the letters sent by HSBC to Z clear and not misleading?

The September letter informed Z that HSBC was closing its SIF account and set out the two options available to it. In a section entitled *“Dates you need to know about”* it gave the date of 27 November 2020 and said:

If you choose option 1, we must have received a request from the new fund provider to transfer the investments out of the SIF/IPP account by this date.

If you choose option 2, we must have received your request to close your Account by this date.

If we don't receive your instruction by this date, any request to buy, sell or switch Fund Shares including Regular Saving payments may not be accepted.

So, I am satisfied on balance that HSBC set out clearly in its correspondence to Z the options available to Mr M and the relevant deadline, and that the information it provided was not therefore misleading in any way.

I also consider it was implied within that correspondence that a request to transfer would be a clear, non-ambiguous, and valid request received by that date. Because, HSBC had a duty to administer the account correctly so it couldn't transfer investments unless it was satisfied that a valid request had been made.

Instructions received by HSBC on 27 November 2020

Z's representative has said that in the lead up to the 27 November he was in direct contact with the HSBC investment centre, to make sure that the relevant forms had been received within the time limits set.

So, we asked HSBC for any call recordings or call notes during that timeframe. It provided recordings for telephone calls made by Z's representative on 16 and 27 November 2020 which I have carefully considered, together with the forms sent to HSBC and the correspondence in this case.

Z's representative contacted HSBC on 16 November 2020 to enquire about the requirements and the process for gaining authority to deal with Z's account on Mr M's behalf. It seems from what Mr Z's representative said, that his firm had recently been instructed by Mr M. HSBC explained that it required a letter of authority and confirmed this had to be written and sent as a hard copy via the post, rather than in an email.

It appears that a letter was then sent, dated 18 November 2020, providing authority for HSBC to communicate with Z's representative but it wasn't received by HSBC until 26 November 2020, as it was date-stamped on that date. It may be that some of that delay was a result of the issues businesses were facing at that time in sending and receiving post during the pandemic.

But, in any event, it wasn't until fairly late in the timeframe that the relevant authority had been provided to HSBC to enable it to communicate with Z's representative about Z's account.

Documents relating to the transfer were then sent to HSBC and received on 27 November 2020, which was the date of the deadline. The first page of the documents dated 25 November 2020 was asking for information about the investments held and said that it enclosed a signed asset transfer instruction which enabled the new provider to act on behalf of Z. The same document then stated in bold *“Please note this is not an instruction to sell or transfer assets.”*

So, I can see why HSBC took the view that it couldn't be satisfied that a valid instruction to transfer the holdings in the account had been provided. And I am satisfied that it wouldn't have been able to carry out a transfer without a valid instruction.

Furthermore, HSBC has highlighted that the process for an in specie transfer of investments- that is to say where the investments are not sold prior to the transfer- is that the new provider would ask for information about what funds were held and the quantity involved. That information would be provided together with a valuation so both parties knew what is being transferred. I consider that is correct because it is important for the parties involved to be clear on what is being transferred and I note this is similar to the process for stocks and shares ISAs.

The new provider would then make the request for those funds to be transferred and a transfer date would be agreed.

I note on the transfer form there is a small note which states "*Please include a share statement or valuation with this instruction*" which I consider suggests the process requires information and a valuation in this type of transfer. And the initial information gathering form asks for full details of Z's investments including the full name and type and number of units. Although I note that the transfer document did include information about the fund involved which would suggest that the new provider already had some of this information.

In any event, I think the difficulty with sending both documents on the same day and those documents arriving on the day of the deadline, was that it didn't allow sufficient time for those steps to be taken, or at the very least for what was required to be clarified and provided. And HSBC had said that it had to have a valid instruction by that date which, as I have said, I think was implied in the information sent to Z, via Mr M.

I also note the three letters sent by HSBC all explained very clearly what would happen if the transfer request from the new provider wasn't received by that date, namely that the investments would be sold. So, I think it was made clear that if Mr M didn't want the investments in Z's account to be sold, then the transfer process had to be set in motion with sufficient time to avoid that outcome.

I appreciate that Z's representative was acting within a short time frame which may be why the two steps were incorporated. But, HSBC, as the existing provider had to ensure it had a valid instruction in order to carry out the transfer. And I think there was sufficient ambiguity in what was received by HSBC, for it to form the view that it couldn't be satisfied that it had received a valid transfer request at that point, which was the day of the deadline it had set.

Contact from HSBC post 27 November 2020

I understand the point the representative makes, that he feels there was a lack of empathy towards Mr M, because HSBC didn't contact Mr M, or Z's representative, before selling the funds. But, I take into account that these letters informing customers that these types of account were closing would have been sent out to all holders of those accounts, not just to Z, as HSBC was closing its platform and so would've been dealing with the closure of a number of these types of accounts.

So, I don't think HSBC was just applying this deadline to Z. I think there was a framework as to how this would happen, and a deadline was put in place so that HSBC could be effective in dealing with all these types of accounts.

And while I do appreciate that there were particular demands on consumers such as Mr M at that time caused by the pandemic, I think that also would've been the case for HSBC and its employees.

Information provided in telephone call of 27 November 2020

HSBC has accepted that it gave incorrect information to Z's representative on that date. So, I think the key issue here is the impact of that information.

I note the representative was informed by HSBC's operative that HSBC had received the documents and the transfer would go through as normal. So, given the tight deadline, I think it would have been reassuring for Mr M to have then been informed the transfer was going through, via his representative.

On that basis, I consider it would have been inconvenient for Mr M, acting on behalf of Z, to subsequently find out that wasn't the case and that the investments had been sold.

Particularly, as his representative has explained that the sale of the investments resulted in Z incurring an additional tax liability. And I think some compensation for the inconvenience caused by the incorrect information it gave in that telephone call should be paid by HSBC.

HSBC has offered £300 which I consider to be fair and reasonable in the circumstances. I note HSBC wrote to Mr M on 9 December 2020. So, I think shortly after that, Mr M would have been made aware that the transfer wasn't being processed and the investments were being sold. And, in any event, Z's representative has said that Mr M received confirmation of the sale on around 17 December. I take it account that as a result of the call Mr M was under the incorrect impression that Z's transfer was going through for about two weeks. I also note that HSBC apologised and offered compensation in its final response letter issued at the beginning of February 2021.

However, I don't think giving incorrect information on 27 November changed the outcome because it was the last day for a valid transfer instruction to be given. And, as I have said, the process was to first ask for the details of the funds held in the account. Even if HSBC had responded to that information request on the same day, in writing, and/or clarified the assets available for transfer, I don't think it is more likely than not that the transfer request could then have been re-sent and acknowledged and considered on the same day.

On that basis I think the compensation offered by HSBC is fair and reasonable in the circumstances.

Putting things right

HSBC should pay Z £300 compensation.

My final decision

My final decision is that Z's complaint against HSBC Bank Plc is upheld in part and HSBC should pay compensation of £300 as set out in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Z to accept or reject my decision before 20 October 2022.

Julia Chittenden
Ombudsman