

The complaint

A company, which I'll refer to as R, complains that HSBC UK Bank Plc wrongly prevented access to its bank account.

Ms M, who is now a director of R, complains on its behalf.

What happened

Ms M told us:

- She and her late partner, Mr E, set up R together. Up until his death in July 2021 he took care of R's finances, but afterwards she needed access to R's account herself. Amongst other things she needed to pay R's employees' salaries, cover rent and bills, and make payments to Companies House and HMRC.
- From July 2021 onwards she spent ten months attempting to gain access to R's bank account. She submitted multiple requests to be added to the mandate for R's account, only for HSBC to either lose the request or reject it for spurious reasons.
- HSBC did eventually allow her to access R's account, but only after she made wholly unnecessary changes to Companies House's records.
- To resolve her complaint, she would like HSBC to pay her substantial compensation for the chaos that it caused, and for the serious impact on her health.

HSBC told us:

- It was not prepared to make changes to the mandate on R's bank account until it received proper authority from a director of R. Ms M was not a director of R until November 2021, so it could not accept her instructions until then.
- It accepts that it used an "*incorrect salutation*" on one of its letters, and that there were delays when Ms M called. It has already paid R £100 in compensation, and it has offered a further £100 (which it is still willing to pay).
- Ms M does now have access to R's bank account. The form it received shows the wrong date of birth for her, but it is nevertheless satisfied that it has received properly authorised instructions to allow Ms M to operate the account.

One of our investigators looked at R's complaint, but he said the £200 HSBC had already offered in compensation was enough. He said HSBC was entitled to reject 'change of signatory' forms that were not signed by one of R's directors. He also said it was entitled to reject forms which did not reflect the information shown on Companies House. He accepted that Ms M had been extremely frustrated by HSBC's actions, but he did not think it had done anything wrong.

Ms M did not accept our investigator's conclusions. Briefly, she said:

- The summary the investigator provided did not properly reflect what happened after she told HSBC of her partner's sudden death. She spent weeks telephoning HSBC every day, being passed from one department to the next, being given contradictory advice, and often being asked to call back on numbers she had already called.
- It took weeks before HSBC even told her that she needed to do anything to change the signatories on R's account. Nobody at HSBC seemed able to tell her how to proceed, and she knew nothing about mandates.
- HSBC kept turning down every mandate she filled in because her deceased partner had not signed it. This was devastating to her on many levels. Even after she wrote to HSBC's chief executive, the bank still didn't help her.
- She filled in one of the forms together with an HSBC employee in the bank. That employee subsequently told her to change the information Companies House held about R. But she wants to stress that *"I was a Director of the company at this point. I did not have to change the information. I was Company Secretary which is a Director's position. I only did it because of the endless delays caused by HSBC up to that point and I was desperate to have the matter resolved"*.
- The form she filled in with the HSBC staff member was the fourth mandate to be rejected, not the first. She suspects that HSBC has provided our service with a highly edited version of what happened.
- HSBC later claimed that her date of birth was incorrect on the form it finally accepted. But there is no way that she would have entered her own date of birth wrongly.
- She has recently learned that a third party organisation has rejected R's funding bid. R missed the previous funding round – it could not participate because HSBC's errors meant that she had no access to R's bank account. Missing two funding rounds in a row has meant that R has no reserves left, and she has no choice but to wind R up. HSBC has caused her to lose the enterprise she and her late partner spent more than twenty years building up, and left her with nothing.

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 think the key difference of opinion here is that Ms M believes HSBC should have treated her as a director of R throughout, but it was not prepared to do so until Companies House's records showed that she was a director. I'm sorry to further disappoint Ms M, but in the circumstances I don't think it would be right for me to criticise HSBC's approach.

I am aware that some limited companies choose to appoint a company secretary to take on some of the directors' responsibilities. And in some companies – apparently including R – there is little to no practical difference in the daily duties of the company's secretary and its directors. But the way a company chooses to assign responsibilities doesn't change the legal duties of the directors; the directors are legally responsible for the company whether or not a company secretary has been appointed.

It is possible in some circumstances for a single individual to act as both company secretary and director in relation to the same company. But that is not what happened here. Ms M was

R's company secretary until November 2021, and then she resigned that position to take up a role as a director.

I do think there was some confusion between Ms M and HSBC. There were times when HSBC explicitly requested that a document be signed by a "director", and it appears Ms M assumed that her signature as company secretary would suffice. HSBC then refused to accept her signature, in her words because it said she was "*only a secretary*". But I do not criticise HSBC for that – it didn't want to give Ms M access to R's bank account unless it had permission from a person legally responsible for R.

Given that Ms M genuinely believed that she was a director before November 2021, I think it is likely that she told HSBC's staff that she was indeed a director of R. Any information the staff gave about mandate changes would then have been based on the false belief that Ms M was a director, and so I don't think it is surprising that the information turned out to be wrong.

HSBC's customer here was R, not Ms M personally. HSBC had an obligation to protect its customer, and I think it was reasonable for HSBC to refuse to accept instructions from Ms M until she was properly recorded as a director on Companies House's records.

Once Ms M did become a director of R, HSBC finally accepted her request to be added to the mandate of R's bank account. That last change of mandate form has the wrong date of birth for Ms M, and I understand why she says that is not a mistake she would have made (people sometimes accidentally write today's date when they mean to write their date of birth, but they very rarely make a mistake with just part of the date). However, regardless of how that error came to be on the form, I don't think it is material. HSBC accepts that Ms M is now a director of R, and I consider that once it received proper authority it gave her access to R's account within a reasonable period.

Overall, I think the only errors HSBC has made here are the two that it acknowledges: its call waiting times were too long, and it sent correspondence with an "*incorrect salutation*". That "*incorrect salutation*" was in fact correspondence it sent to Mr E, long after it had been told that Mr E had died – and which understandably caused Ms M considerable upset. However, as a limited company R is not itself capable of feeling distress, so I cannot award compensation for injury to R's feelings. I can award compensation for the inconvenience R suffered, but I think HSBC's offer of £200 (£100 of which it has already paid) is fair in that respect.

Ms M has eloquently described the distress that she suffered personally as a result of HSBC's actions. I entirely accept her evidence on that point. It is obvious that she has been through an extraordinarily difficult time, both personally and professionally, and I am sorry to hear about the financial difficulties that both she and R are continuing to suffer. But I simply have no power to make an award to her for her personal distress. The bank account at the centre of this dispute belongs to R, and the complainant is therefore R rather than Ms M personally.

Putting things right

HSBC should pay R an additional amount of £100 to compensate it for the inconvenience it suffered.

My final decision

My final decision is that the compensation HSBC UK Bank Plc has already offered is fair and reasonable in the circumstances of this complaint. It has already paid R £100, and I order it to also pay the further £100 that it has offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 5 April 2023.

Laura Colman
Ombudsman