

The complaint

The estate of Ms W complains that HSBC UK Bank Plc ('HSBC') failed to protect the late Ms W from financial harm when a joint account was opened in her name without her knowledge.

The complaint has been brought by Ms J as the administrator of the estate of the late Ms W.

What happened

Ms J says that when her mother died in 2014, she became aware that she had no assets. I understand that from October 2005 to her death the late Ms W was in a nursing home after suffering a stroke. At around the same time, the late Ms W transferred her home (except for a piece of land) to her son, who I'll refer to as D in this decision. D didn't make any payment to the late Ms W when her home was transferred. The land that was retained was later sold and the proceeds of sale were credited to a joint account with HSBC in the name of the late Ms W and D.

The joint account the funds were credited to was opened in January 2007 and £124,358.50 was credited to the account in July 2007. Over the next four months the account was drained. The estate has referred in particular to cheques on 20 July 2007 and 23 August 2007 for £112,000 and £8,130 respectively. There were also cash withdrawals and some card payments.

The estate of Ms W say that she was unaware the land had been sold and the joint account opened, and that she lacked capacity at the time. Ms J has provided evidence which confirms that the late Ms W was hospitalised from 22 January to 25 January 2007 and that the address given for Ms W in the account opening application was incorrect as she was in a nursing home at the time. The estate say that HSBC shouldn't have allowed the account to be opened and should have questioned the cheque payments soon after the account was opened. Ms J also says that HSBC failed to disclose to her the existence of the joint account when she made enquiries after Ms W's death.

The estate brought civil proceedings against D in respect of the property transfer and the proceeds of sale of the land and during this process found out about the joint account. Ms J says that if HSBC had advised her the account existed in 2016 when she made enquiries about the accounts held by the late Ms W, the estate could have avoided substantial legal costs in bringing civil proceedings.

Ms J, on behalf of the estate of Ms W, has brought a civil claim against D which was separated into two claims at a summary judgement hearing. The first (which Ms J describes as the account claim) relates to the proceeds of the sale of land which passed through the joint account in the name of the late Ms W and D. Ms J has provided the court order dated 3 February 2023 in which D was ordered to pay Ms J, in her capacity as administrator of the estate of Ms W, £124,358.50 plus interest.

Ms J has explained that to date the order has not been enforced but, in any event, the entire amount will be swallowed by legal fees in bringing the civil claims.

Ms J has also referred to a second civil claim which relates to the transfer of her mother's home to D in October 2005. This claim was to include lost rent on her mother's property, but this aspect of the claim has been dropped because of soaring legal fees.

HSBC said that after reviewing its account opening procedures no error had been identified. At the time, an account could be opened with paperwork being sent out.

The estate of Ms W was unhappy with HSBC's response and brought a complaint to this service. The estate would like HSBC to refund the proceeds of the sale of the late Ms W's land, write off the loan Ms J took out to pay legal fees in the high court (civil) trial against D and refund all payments made, reimburse the estate's legal fees in bringing a civil claim, and compensation for upset, stress and anxiety.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said that HSBC failed to disclose all accounts held by Ms W and that Ms W didn't have capacity to authorise the opening of the joint account or transactions from it. The investigator went on to say that to ask HSBC to refund any transactions from the joint account with D he'd need to be satisfied that Ms W hadn't had the benefit of the transactions. Given the lack of evidence surrounding where the land sale proceeds went, the investigator didn't think the estate could demonstrate that Ms W didn't receive any benefit from the cheque payments that left the joint account. The investigator said that HSBC had agreed to refund card transactions totalling £3,050.50 which clearly weren't for the benefit of Ms W on a goodwill basis.

Ms J, on behalf of the estate of the late Ms W, didn't agree with the investigator's findings. Ms J's response is lengthy, so I have summarised what I consider to be the main points below. I'd like to reassure Ms J that I have carefully considered everything she has said though. Some of Ms J's response relates to matters already considered by this service under a separate complaint or amount to speculation based on these matters. I can't address aspects already considered by this service so have filtered out these comments as far as possible.

- The late Ms W did not know of the sale of the land or of the existence of a joint account.
- HSBC failed to advise her of the existence of the joint account until 2021. She says the investigator failed to take into account the huge impact of the delay on various legal claims including her account claim, property claim and the lost rental aspect of her property claim. Ms J says that costs increased substantially in this period when her legal representatives sought to gather information from D that HSBC hadn't provided when asked, and the claim became unnecessarily protracted. As a result, Ms J has asked that HSBC pay her legal fees and disbursements in respect of these claims, to include payments already made from savings and an award made in another case against HSBC which was put towards legal fees. Ms J also took out a loan with HSBC to fund legal action and would like HSBC to reimburse all payments made towards it and to write off the balance.
- In addition to the above, I should consider making an award for loss of rent in respect of the property claim brought by the estate. This is because this aspect of the claim had a good prospect of success but has been dropped because of rising legal fees. These fees wouldn't have been incurred if HSBC provided information about the joint account sooner.
- The delay in providing information about the joint account has also meant that crucial evidence is no longer available due to the length of time records are retained. This means the estate has been denied information that would have helped its legal claims and that further account opening information isn't available.
- There were numerous red flags in the account opening process that HSBC failed to identify and investigate. Some examples include an incorrect address for Ms W; the fact identification wasn't provided (the notes record other manager's discretion in the

identification section); the fact only D was to be issued with an ATM/switch card and cheque book and was the only person who would receive statements; there was an indication Ms W was vulnerable. Also, the account opening reason was for personal expenses, but funds were divested over a four month period.

- The account opening information doesn't indicate any interaction with the late Ms W, even though Ms J and her then husband attended an HSBC branch in July 2003 and alerted a staff member (believed to be the branch manager) to the fact Ms W had been incapacitated since 17 July 2003 and highlighted D's unhealthy interest in Ms W's finances since. Following this branch visit, Ms J and her then husband understood the late Ms W's account had been frozen.
- In a previous case involving Ms W's sole account the ombudsman concluded that Ms W lacked capacity from 2006 and subsequent transactions weren't authorised. Ms J questioned why the same approach wouldn't apply.
- HSBC failed to safeguard Ms W as a vulnerable person when there was evidence that she was being taken advantage of. Ms J referred to movement of money from other accounts and a mandate that don't form part of this complaint as well as the transactions on the joint account.
- The late Ms W did not get any benefit from the funds that passed through the joint account with D and the judge was clear about this in his summing up and order in the estate's account claim. The judge noted that D had failed to disclose evidence in respect of the payee of the cheque for £120,130 from the joint account, or how the funds were spent, and was unable to prove any valid expenditure from the proceeds of the sale of land. As a result, the order was to pay Ms J, as the administrator of the estate of Ms W, £124,358.50 plus interest at 3% and costs to be assessed.
- Ms J pointed out numerous inconsistencies and false statements made by D during the account trial proceedings as well as circumstantial evidence in respect of D's spending habits – including holidays and house renovation.
- As a result of HSBC's failings, it should reimburse all funds resulting from the sale of the late Ms W's land and pay all legal fees for the account case and possibly also the property case.
- Ms J has suffered substantial stress and inconvenience as a result of HSBC's failings.

As I intended to reach a different outcome to the investigator, I issued a provisional decision in which I explained why I wasn't minded to uphold the estate's complaint. In summary, I said in light of the very limited information available in respect of the opening of the joint account, and without any details of the process that applied in 2007, I couldn't fairly say HSBC did anything wrong when the joint account was opened. This meant that both account holders could make transactions. And although large amounts were moved out of the account, without knowing the payee or what HSBC did at the time I couldn't fairly say it had done anything wrong.

I wasn't persuaded that HSBC delayed in the provision of account information to Ms J or that it hid the fact a joint account had existed and been closed prior to Ms W's death. Finally, I recognised the difficulties Ms J has suffered but said that even if I upheld any part of her complaint, I can't award compensation to her as the complaint has been brought by the estate, which is a separate legal entity.

Ms J, on behalf of the estate of Ms W provided a comprehensive response to my provisional decision. I have carefully read and considered the full response and exhibits, but will focus my attention on what I consider to be the salient points, which I have summarised below:

- Her previous complaints and this complaint are inextricably linked. I need to consider

the other complaints and the evidence provided in each of them in determining this complaint.

- Ms J notified HSBC of her mother's death on 14 February 2014. She also spoke to someone in branch about her concerns about D and the sale of her mother's home to pay for nursing fees and asked for everything HSBC had in relation to her mum and her bank accounts. After this she received an email on 28 February 2014 saying that HSBC would collate details of all accounts held by Ms W and send her a summary. The summary wasn't sent, so Ms J chased but didn't hear from HSBC until its letter of 14 July 2015, 17 months later, asking her to provide letters of administration, followed by a chaser letter in March 2016. When she attended a branch of HSBC in March 2016 with relevant documentation, she also explained the position with D and asked for details of all accounts held by her mother. And at no time did HSBC say it would only provide information about accounts that were open on the date of her mother's death.
- An ombudsman who issued a jurisdiction decision in another case brought by Ms J didn't question the meeting that took place in 2003 with an HSBC branch manager. Ms J says this shows HSBC accepts she reported D's unhealthy interest in his mother's financial affairs. Diary notes she completed at the time also discuss the meeting and concerns were raised with the police. HSBC failed to protect Ms W's accounts after this, resulting in the opening of the joint account in 2007 and the loss of Ms W's funds.
- HSBC confirmed that a joint account could be opened without attending branch as long as HSBC could verify identification and address for the parties involved. The branch manager's use of discretion in respect of verification doesn't comply with this process so, in Ms J's opinion, HSBC's procedure wasn't followed. Ms J provided information obtained from an internet search in respect of identification usually required to open an account and HSBC's use of manager discretion. Ms J went on to say manager's discretion was used because D was unable to provide any photographic ID for Ms W. She also said her mother's signature on the joint account application didn't match signatures previously provided so the joint account shouldn't have been opened on this basis alone.
- HSBC should have intervened when cheques were presented for £112,000 and £8,130 as there were signs of suspicious activity. If it had done so, D's fraudulent activities would have come to light and all the estate's legal costs could have been avoided.
- Money taken from the joint account wasn't used for Ms W's benefit, and D has repeatedly lied to multiple parties about how the money was spent.

This service sent Ms J's response to my provisional decision to HSBC and asked for its comments, particularly in respect of the opening of the joint account in 2007 and the information it held about the accounts held by the late Ms W.

HSBC reiterated that due to its data retention period of six years it was unable to locate evidence. HSBC also confirmed that its bereavement process was to only provide details of accounts that remained open at date of death. This was because no action needed to be taken in respect of closed accounts. HSBC provided notes of calls with Ms J in 2021 and resent letters previously provided from around this time.

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.

Where evidence is unclear or in dispute, I reach my decision on the balance of probabilities – in other words on what I consider most likely happened based on the available evidence and the surrounding circumstances.

I realise this is a difficult and emotive case which has been ongoing for some time and the estate has huge legal fees to settle. I need to make it clear to the estate of Ms W that my role is only to consider whether HSBC acted fairly and reasonably as a bank and if not, how to put things right. I am not deciding if D is guilty of fraud or any other criminal offence. I am also unable to comment on all the evidence that relates to the wider court proceedings, the errors or omissions of third parties not involved in this dispute, or on any points that this service has previously considered in any other complaint brought by Ms J on behalf of the estate of the late Ms W.

Joint account opening

My role here is to consider the available evidence and reach a decision on whether I consider HSBC acted fairly in opening the joint account at the heart of this dispute.

The account was opened in early 2007. HSBC has confirmed that it is only required to keep records for six years and that due to the passage of time it no longer holds any records from the time the account was opened. I agree that there is no requirement for HSBC to retain historic records of this nature.

Ms J has supplied some records from the time the account was opened. There is limited information in the documentation provided and the information is of little value unless I have a clear picture of the account opening process that applied at the time. Given the passage of time, HSBC has not been able to provide me with any details of this process, and I don't think it would be fair or reasonable to draw adverse inferences from this.

The account opening information Ms J has supplied records in the ID section that manager's discretion has been applied. Without any information about the process that applied in 2007 it's hard to say what this means. HSBC has supplied me with systems records which indicate that the manager's discretion option was chosen from a dropdown box. My impression is that there was likely a choice of ID documents to input at this stage and the one chosen was manager's discretion. Ultimately though, I don't know what was required at the time or what was provided.

Ms J says that when she asked HSBC how the joint account was opened HSBC said in a letter in September 2021 that it was unable to confirm if Ms W would have needed to attend branch to open the account as an account could be opened with paperwork being sent. The letter went on to say this was the case "*as long as we were able to verify identification and verification of address for the parties named on the account*". Ms J says this means that HSBC didn't have any identification documents for Ms W and has concluded that HSBC didn't follow its own process.

I'm not persuaded I have enough evidence about the procedure that applied or what took place to reach such a conclusion. Ms J's comments about HSBC's account opening processes and when manager's discretion can be applied are based on the results of asking questions on an internet site. I'm not persuaded these comments can be taken to accurately reflect HSBC's actual account opening procedures in 2007, particularly as they are very unlikely to have been shared outside of HSBC.

Ms J has pointed out issues with the information in the documents provided which she says show the account was incorrectly opened. For example, Ms J has referred to the fact that the address provided for Ms W was incorrect as she was a resident in a nursing home at the relevant time. I have asked HSBC to provide me with its record of the addresses held by Ms W but, again, due to the passage of time, it is unable to do so. But if HSBC wasn't notified of a change of address, I can't expect it to have known that the address provided on the

application was incorrect. And I'm not satisfied the signature on the application was so different to previous examples that HSBC should have refused to open the account.

I appreciate that Ms J has provided evidence to say that the late Ms W lacked capacity in respect of her care plans at the time the account was opened. There is nothing to indicate that HSBC was made aware of a lack of capacity or that it had any reason to suspect that Ms W wasn't in a position to consent to opening an account in early 2007. There has been no reference to any form of power of attorney or to a Court of Protection Order being in place at the time.

Ms J says she and her then husband attended a branch to discuss D's unhealthy interest in the late Ms W's financial affairs in July 2003. This service has explained to Ms J in another complaint she brought that HSBC has no record of this. Ms J's own diary notes at the time say that the manager agreed to look out for any fraudulent goings on and suggested that she get a solicitor. This is the extent of any evidence relating to the meeting. There is nothing to say what was discussed and no indication that Ms W's capacity was raised.

It's possible that the meeting took place and that following it a restriction was placed on the account to allow Ms J time to put more formal processes in place, and I note that Ms J has recorded she was advised to get a solicitor. But a bank can't prevent a customer from using its services indefinitely on what it has been told by one family member. The joint account was opened well over three years later and in this time no formal mechanisms were put in place, such as a Court of Protection Order.

Ms J has referred to medical and social services records in respect of Ms W's financial affairs. But HSBC had no knowledge of any of these discussions. I need to look at whether formal provisions were in place that HSBC should have acted on. As I have said above, no formal mechanisms were in place.

Overall, I can't fairly conclude on the limited evidence available, and with no knowledge of the process that applied at the time, that HSBC did anything wrong when the account was opened.

Funds that left the joint account of the late Ms W and D

I've gone on to consider whether HSBC acted unreasonably in allowing transactions to leave the joint account.

I have already decided that HSBC didn't act unreasonably in opening the joint account. I don't have HSBC's joint account terms and conditions for 2007, but it is a standard feature of a joint account that any joint account holder can use the account to make or stop payments. Given this point, I don't consider HSBC ought reasonably to have had any concerns if D authorised transactions from the joint account he held with Ms W.

I agree that a cheque for a particularly large sum of money (£112,000) left the joint account in July 2007. Without knowing the destination account (and even after lengthy court proceedings this information is still not available), it's hard to say if HSBC ought to have had any concerns. And again, given the time that has elapsed since the transaction, HSBC has no records to indicate what happened at the time. It's possible HSBC intervened but I don't have any evidence due to the passage of time and data retention policies. In the circumstances, I can't fairly conclude that HSBC should bear any responsibility for the loss of funds from the late Ms W's joint account.

Ms J as the administrator of the estate of Ms W, has a judgement for £124,358.50 which was obtained before this complaint was raised with HSBC. The judge in the civil case noted that D failed to provide evidence (including bank statements) to evidence where the £120,130 paid out of the joint account by cheque was paid and how the funds were spent. As D was unable to prove any valid expenditure for the benefit of Ms W from the £124,358.50 proceeds of sale of land, judgement was in favour of the estate.

I appreciate that there are difficulties in enforcing the judgement and the estate has incurred significant legal expenses in obtaining it, but I can't reasonably hold HSBC responsible for these things.

Did HSBC act unreasonably in not telling the estate of Ms W about the joint account with D?

Ms J says that had HSBC disclosed the joint account in the name of her mother and D when she notified it of her mother's death, legal fees in bringing civil proceedings against D would have been dramatically reduced and the prospect of recovery would have increased.

I can see that in 2014 HSBC sent Ms J a letter thanking her for notifying it of Ms W's death and advising that a specialist support team would collate information about her accounts. In April 2016 HSBC provided a balance and product summary as at 3 February 2014 which included a savings and current account and went on to say that the saver account was closed in March 2014. Ms J says that she chased HSBC in the interim but didn't get a response.

I have looked into what happened between 2014 and 2016 and can see that HSBC sent Ms J (who notified it of Ms W's death) a letter on 14 July 2015 saying that it was in the process of dealing with her request regarding the closure and/or conversion of the late Ms W's accounts. The letter went on to say that to complete the request HSBC required sight of the original letters of administration. HSBC sent another chaser letter to Ms J on 17 March 2016. Ms J went into branch with letters of administration in early April 2016 which resulted in HSBC providing account information in its April 2016 letter. There is no evidence that Ms J chased HSBC during this period and HSBC's letters point to the fact it was waiting for information from Ms J to move forward. So I can't fairly conclude that HSBC was responsible for a delay from 2014 to 2016.

Ms J says that as court proceedings progressed to the July 2021 summary judgement hearing D referred to there being a joint account and was ordered by the court to provide details of the account. When Ms J first asked HSBC if there was a joint account it incorrectly advised there wasn't. Shortly after, when D provided the joint account sort code and account number, Ms J approached HSBC again and it confirmed the existence of a joint account and later provided details.

I'm not persuaded that HSBC misled Ms J about the existence of a joint account. HSBC's 2016 letter was clear that it referred to accounts held on 3 February 2014. The joint account with D was closed in 2009 so it wasn't an account Ms W held on 3 February 2014. I haven't seen any evidence to suggest HSBC was asked to provide details of all accounts ever held by the late Ms W or that it ever suggested the accounts listed in its 2016 letter were the only HSBC accounts she had ever held. And I think HSBC's reason for only providing details of accounts at date of death is reasonable.

Given that I am not persuaded HSBC withheld information about the existence of Ms W's joint account with D, and my other conclusions in this decision, I am not asking HSBC to pay anything to Ms W's estate.

Compensation for distress and inconvenience

I have not upheld any aspect of this complaint but even if I had I could not award compensation to Ms J. The late Ms W is the eligible complainant in this case and the complaint has been brought on her behalf. In these circumstances I am unable to award compensation to Ms J for any distress or inconvenience she has suffered.

My final decision

For the reasons stated I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms W to accept or reject my decision before 15 November 2024.

Jay Hadfield
Ombudsman