

## The complaint

Mr A is a director of a charitable organisation which I'll call 'G'. He complains that HSBC UK Bank Plc behaved unreasonably when it restricted access to G's account causing the organisation a financial loss.

## What happened

G held an account with HSBC. In December 2022, HSBC was contacted by G's other director, Mr K, to say that there was a dispute between himself and Mr A about how the organisation's funds were being used. Mr K said that he'd been removed without his authority from G's account mandate and as G's director on Companies House, so he requested that the account be restricted until the dispute between directors was resolved - and that no funds were released unless approved by both directors.

HSBC restricted access to G's account. The bank said that it wouldn't allow any funds to be withdrawn from the organisation's account without the authority of both Mr A and Mr K. HSBC also said that it wouldn't allow any changes to the account mandate without the authority of both directors, which Mr A wasn't able to obtain due to the ongoing dispute. The bank then reinstated Mr K as a signatory on G's account mandate – as the last mandate it held prior to the dispute was for Mr A and Mr K to be able to authorise transactions from G's account.

Mr A repeatedly contacted the bank to explain that Mr K hadn't originally been a signatory on G's account mandate before the dispute, and as he didn't originally have this level of authority so he should be removed. Mr A also provided board resolutions, board minutes and new mandate forms, but HSBC refused to update the account and remove the restrictions it had applied. It said its process wasn't to remove the restriction on the account unless both Mr A and Mr K confirmed in writing that Mr K was no longer a signatory on G's account.

In March 2023, Mr A complained to HSBC and asked the bank to remove the restriction. The bank wasn't satisfied that the dispute had been resolved, in part due to the information held about G on Companies House, so it wouldn't do so. The complaint was brought to this service, but one of our ombudsmen didn't think we should consider the complaint due to the director dispute.

As our service wouldn't consider the complaint and HSBC wouldn't remove the restrictions based on the information G had submitted, the organisation instructed solicitors, who I'll refer to as 'D' to act on their behalf. D contacted the bank in late June 2023 and provided evidence of the original mandate. After reviewing all of the evidence available, HSBC agreed to remove Mr K from G's account mandate and lift the restriction on the account in September 2023.

Mr A complained to HSBC. He said that the information provided by D which had facilitated the removal of the restriction on G's account had already been provided by him in early 2023, but HSBC had only acted upon this when threatened with legal action. Mr A said this evidenced that the bank's actions in restricting the account had been incorrect as it hadn't needed Mr K's consent to be removed as a signatory for the restrictions to be lifted. He also

said that HSBC had added Mr K to G's account mandate without the required authority which allowed Mr K to remove funds from the account, and also caused the organisation a financial loss of £300,000 as the account couldn't be used.

HSBC didn't uphold Mr A's complaint. It said that the original mandate that it held for G had been for either Mr K or Mr A to sign, and due to the dispute, it had changed this to require both directors to sign. It also said that due to the dispute the account had been restricted – which was in line with its procedure. It was only after D had submitted a legal claim, that the mandate was updated to remove Mr K, and the account restriction removed. However, this was outside of the bank's normal procedure and on the basis G's details would also be amended on Companies House to reflect this. It didn't accept the financial losses that Mr A said G had incurred as it said it was acting in the organisations best interests, but it did offer £200 compensation. Mr A didn't think this was fair and asked this service to look into G's complaint.

Our investigator didn't recommend the complaint be upheld. He thought it was reasonable for HSBC to restrict activities from G's account given the dispute between the two directors, as both were noted as persons with significant control at various points in the dispute. He also thought HSBC had acted in line with the terms and conditions of the account in restricting access to the account, and that its actions in rescinding the access for a single director to remove funds from the account and requesting that both directors agree to the release of any payments was reasonable.

The investigator didn't agree that HSBC had favoured Mr K. He said that both Mr A and Mr K had been directors when the dispute was initially raised, and therefore its actions were reasonable to safeguard G's assets as G was the customer of the bank. He also thought it was reasonable that HSBC hadn't accepted the new board minutes as these had been signed by parties that Mr K had already said he objected to, Companies House hadn't been updated to reflect these changes, and because there was an ongoing investigation with D. He thought it was fair that HSBC had only removed the restrictions from G's account after reviewing the evidence available and receiving D's confirmation that the issue with the directors was being resolved and Companies House was being updated accordingly. So, he didn't think HSBC should be liable for any losses caused to G by the account restriction.

Mr A didn't agree and asked for an ombudsman to review G's complaint. He said the investigator hadn't considered the mandate change requests which had been submitted via online banking and been accepted by the bank. He also said that Mr K hadn't ever been on G's mandate, but despite this, the bank had provided him with online banking details and changed this to two to sign, so had behaved unreasonably.

I issued a provisional decision on 11 July 2024. 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. Having done so, I'm sorry to disappoint Mr A, but there's not much more that I can add to what our investigator has said.

Mr A says that HSBC behaved unreasonably as it took sides with Mr K and blocked G's account despite being provided with updated mandates, board resolutions and minutes, as evidenced by the bank's actions when challenged by D. But I'm not persuaded that's the case. Given that there was a dispute between two parties who HSBC reasonably believed were able to give instructions with regards to G's funds, I don't think it acted unfairly by restricting access to the account unless both parties agreed to any transactions. Especially given that Mr A told HSBC that Mr K had willingly resigned from G as a director, but Mr K told the bank that wasn't the case.

Mr A says that the removal of the account block by HSBC after D's intervention shows that the bank should've removed the block and changed the mandate after his first request. But I'm not persuaded by Mr A's argument here. HSBC had been made aware from Mr K in December 2022, that there was a dispute between the directors, so the bank's obligation at that point was to protect the assets of its customer, which was G – not Mr K or Mr A. I recognise Mr A thinks that HSBC sided with Mr K here and should have accepted the changes he'd submitted. But in doing so, the bank would have been ignoring the information it had been given by G's other director in that the new documents were being forced through without his consent as part of the dispute. So, HSBC wanted confirmation in writing that Mr K had agreed to be removed as a signatory – as per its process when dealing with account disputes of this nature.

Furthermore, when HSBC was made aware of the directors' dispute, Mr K was still registered on Companies House as a person of significant control and a director of G. Mr K told HSBC at the outset that he was being removed from G's organisation without his agreement and new appointments made which he didn't agree to. So, HSBC understandably wasn't prepared to simply accept and action the new board resolutions and minutes which had been submitted to remove Mr K - when he'd already told the bank this wasn't his decision. As HSBC couldn't be sure who was entitled to act on G's behalf, it restricted access to the organisations account.

HSBC told us that its process is to restrict access to accounts when there is a dispute between directors or authorised parties. I think this is reasonable as the bank is expected to remain impartial. I recognise that Mr A says HSBC's staff were favouring Mr K, however I haven't seen any evidence that's the case. I'm satisfied that HSBC behaved reasonably as it said that the funds in G's account could only be released if both directors agreed. It also said that the restrictions would be removed once it had authority signed by Mr K to remove him as a signatory. I recognise that Mr A wasn't prepared to do this, however when Mr A had sent the board minutes from February 2023, these said that Mr K had volunteered to resign. This was contrary to what Mr K had already told the bank.

I recognise that Mr A says that HSBC used the information he'd already provided to remove the restriction after D became involved. I also acknowledge he feels this proves the bank should have actioned the request sooner and that this means the bank didn't need Mr K's authority. But I don't think that's fair. I've seen evidence from HSBC which shows that its process remained the same when D approached it, in that the account should be restricted. I've seen evidence that the bank was regularly reviewing its position with regards to G's account prior to being contacted by D. However, it re-reviewed the information provided by D as part of its ongoing investigation, along with other internal information (including the request from a third-party donor) and decided to remove the restriction on the account after additional consideration with senior stakeholders within the bank.

I'm not persuaded this means that HSBC behaved unfairly or made a mistake in not removing the restriction earlier - nor have I seen any evidence that HSBC says it made an error by applying the restriction. Throughout the evidence I've seen, HSBC has been clear that it has decided not to make any changes until it was satisfied the dispute was resolved - and I think this was fair. HSBC applied the restriction to G's account for the organisations protection as it couldn't be sure who had the correct authority, or that the funds were being used appropriately due to the accusations by the directors about each other. I can see that the action taken by HSBC was the

bank's standard process and I'm satisfied that this was in line with its regulatory obligation of protecting its customer's funds.

Furthermore, I'm satisfied that when the restriction was removed this was because D was able to demonstrate that the issues had been resolved legally. D also provided information to the bank, which along with other information the bank had requested, enabled HSBC to remove the restriction. I've seen evidence from HSBC that removing the restriction from G's account was outside of the bank's process, and that this was a decision based on all the information and evidence available at that point in time. I've seen that HSBC was undertaking its own investigation and it was only when the bank was satisfied that it could allow G's funds to be released appropriately that the restriction was lifted. I'm satisfied that HSBC acted within the terms and conditions of G's account in both restricting the account, and at when it chose to remove the restriction.

I also acknowledge Mr A's comments about HSBC adding Mr K onto G's account as a signatory and then Mr K removing funds that he wasn't entitled to. However, I've already seen evidence from both parties that Mr K had authority as a signatory on G's account initially – which had been granted by Mr A. From what I've seen, HSBC simply added Mr K back on to G's account after he'd said he'd been removed due to the dispute. However, Mr K wasn't able to use his authority as a signatory after being added back on to G's account, as the mandate was amended by HSBC to require that both directors authorised any payments. So, I'm not persuaded that HSBC gave Mr K access that he didn't already have – it simply reinstated the mandate which it had held since June 2021 once it was aware of the dispute – but with the requirement that any payments now needed dual authorisation.

Mr A has also provided us with a list of unauthorised transactions that he says Mr K was able to make due to HSBC's actions. However, these transactions took place in July, August, and September 2022, before the dispute between the directors was raised with HSBC. At this point, HSBC hadn't made any changes to G's account, and I haven't seen any evidence that HSBC granted Mr K the authority as a signatory for him to make these payments.

Based on what I've seen, Mr K had been a signatory on G's mandate since a signed form had been submitted to the bank by Mr A and Mr K in June 2021. I recognise that Mr A says that the mandate is fake, and that HSBC has falsified this document. However, I haven't seen anything that suggests that the case, and based on what I've seen this appears to have been signed in a manner consistent with other documents held by the bank. I think on the balance of probability the mandate is genuine, even if Mr A doesn't recollect this being submitted to HSBC due to the passage of time. So, I don't think HSBC behaved unreasonably here in reinstating the account signatories on G's account to the mandate it held originally - before Mr K said he'd been removed without his authority as part of the dispute.

Mr A also believes that these transactions were the reason G's account was restricted, as HSBC wanted to hide the error of allowing Mr K to make these payments when he wasn't on G's account mandate. He's also unhappy that our investigator said he wouldn't review the mandate changes as part of this complaint. However, as our investigator has already explained, the mandate changes and related transactions weren't raised with our service as part of this complaint. If Mr A wishes our service to investigate HSBC's actions with regards to these transactions, he would need to raise this with the bank and if he remains dis-satisfied, he may be able to bring this to our service to consider separately.

Mr A says that G has incurred losses of around £300,000 as a result of HSBC's actions. I haven't seen any evidence of the losses mentioned by Mr A here, but in any event, as I don't think that HSBC made an error in restricting access to G's account, I don't intend to direct HSBC to make an award for any consequential losses. I can see that HSBC has offered Mr A £200 compensation for the delays caused at times internally, and based on what I've seen of the banks internal discussions, I think this is reasonable.

I also recognise that Mr A says that HSBC should pay the legal costs which G incurred as a result of the organisation's account being restricted and the information provided not being accepted. But I don't agree. It was Mr A's decision to use solicitors to contact HSBC about this issue, I've not seen any evidence that this was required to resolve the issue here so I can't fairly ask HSBC to refund the legal costs incurred. I think it's also worth noting here, that HSBC had provided Mr A with a reasonably simple way to resolve the issue, in that he could get signed letter from Mr K where he agreed to be removed as a signatory – but Mr A refused to obtain this. Given that the board minutes provided by Mr A said that Mr K had voluntarily resigned, I think it was reasonable that HSBC simply asked for Mr A to provide this in writing.

I'm sorry to disappoint Mr A as I know he feels strongly about G's complaint, but based on the evidence available I think HSBC has behaved reasonably here, and its offer of £200 compensation is fair - so I don't intend to order it to do anything more.

I invited Mr A and HSBC to give me any more evidence and information they wanted me to consider before issuing my final decision. HSBC accepted the decision and had nothing further to add. Mr A didn't accept the decision. He said in summary that:

- The decision didn't comment on how Mr K was able to withdraw the disputed transactions, HSBC's lack of response about the withdrawal authorisation, or how Mr K had been granted the same authority on G's mandate as Mr A - despite his financial history.
- HSBC didn't tell G that Mr K needed to be reinstated as a director to resolve the issue with the account (despite Mr K being suspended). And regardless of whether or not Mr K had resigned, HSBC hadn't respected that Mr A was the primary user and Chief Executive Officer (CEO) for G.

### **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, I've reached the same conclusion as I did in my provisional decision.

Mr A is unhappy that I haven't commented on the disputed payments from G's account, the authority of these transactions, and the mandate held by the bank that allowed Mr K to make the withdrawals from G's account. However, as I have already explained, those points were not part of the complaint that was brought to our service and therefore I am unable to consider them as part of this decision. Mr A would need to raise his concerns with HSBC first and allow the bank to consider its response before our service can review his complaint, in line with the DISP rules.

I also recognise that Mr A says HSBC should have respected his authority as G's CEO. However, as I have explained in my provisional decision, both Mr A and Mr K were G's

directors on Companies House, and according to the mandate held by the bank both parties could give instructions to the bank. So, I think that HSBC acted reasonably in restricting access to G's account after it had been made aware of the dispute between the directors. I also don't think it's reasonable for Mr A to think that HSBC should have treat him more favourably than Mr K here given his title. Ultimately the bank believed it was acting the best interests of G, as its customer, and I think that's what it did here. Therefore, I think that HSBC's offer of £200 compensation is reasonable given the wider circumstances of the complaint.

### **My final decision**

HSBC UK Bank Plc has already made an offer to pay £200 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So, my provisional decision is that HSBC UK Bank Plc should pay £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 30 August 2024.

Jenny Lomax  
**Ombudsman**