

The complaint

C, a limited company, complains that HSBC UK Bank Plc didn't freeze its bank account as requested and delayed access to the new director causing loss and inconvenience

What happened

C had a sole director and owner who passed away in September 2022. This was reported by his personal representative – the former director's brother. He says he was told by a manager in a branch that C's account would be frozen, and all regular payments cancelled. The brother became a director but says he didn't have effective access to C's account until December 2023. And he then found that regular payments totalling over £3,300 had been debited. He wasn't satisfied that these hadn't been refunded by HSBC and that C was only paid compensation of £500.

HSBC in a final response letter accepted that it had made a mistake. In that letter it said that a block had been placed on internet banking for C after the director had passed away. But that the regular payments had continued. HSBC apologised for any inconvenience and paid C £500.

Our investigator noted that in its submission to this service HSBC said that it could raise indemnities for the direct debits. It since did this and C was paid refunds for the period from the businesses involved. There had been one standing order which was £100 a month for accounting services. She didn't see that there was a basis to ask that this be refunded as this related to an agreement between C and the party involved.

Our investigator said that HSBC hadn't been able to act on the instructions of a personal representative for the deceased director as C was a separate legal entity. She recognised the delay in adding the new director to the account mandate. And that the director wasn't able to pass security for telephone banking and resolve issues accessing internet banking. She thought that the compensation paid already was sufficient for the customer service issues and inconvenience and taking into account the refunds.

C didn't agree and wanted its complaint to be reviewed by an ombudsman. The new director had been explicitly told that no payments would be made from C's account, and he provided a recording of this discussion. He couldn't see why it took 15 months for him to have access to the account when his deceased brother's personal accounts were dealt with quickly. He said that he was frustrated at the unprofessionalism of HSBC which had admitted paying out the money but hadn't returned it.

C had been charged bank charges when the account couldn't be used. The situation had affected the director's mental health and he had wanted to arrange an orderly close down of C. He had found out the hard way that he couldn't do this as a personal representative. He had wanted to access the account but had failed security several times and eventually passed this with substantively the same responses. Although an internet service provider (ISP) for C had given the money debited back to C, the ISP had re-debited this amount of £843.50 to a bill in the name of his brother which our investigator didn't know about when she issued her view. He also wanted more compensation for the time spent on this matter,

the impact on his mental health, that he had to loan C money as he couldn't access the account and for the overall impact. He couldn't see that HSBC had faced any sanction for what happened, and which might stop this happening in future.

My provisional decision

I issued a provisional decision on 9 September 2024. I set out below what I said:

I'd listened to an extract of a call recording which the director of C says was with a branch manager at HSBC on 28 September 2022. This is only 37 seconds, and I was unclear why I hadn't been provided with the full recording and whether HSBC knew it was being recorded or had been provided with this before. There is reference to payments on 'the account' being stopped and HSBC writing to the businesses involved to explain the reason so that there wouldn't be follow up addressed to the deceased brother. The extract doesn't explicitly cover whether this is referring to the personal accounts or the account of C or both.

C had also provided emails following that discussion. There is one from the branch manager dated 11 November 2022 in which she says she has sent an urgent email to the bereavement team to deal with C and the way forward and that they think the brother would need to contact Companies House. There is then an email from that team dated 17 November 2022 asking for the contact details. And this is chased up on behalf of C into December 2022 and leads to the brother being sent an account mandate form after he became director in January 2023.

The mandate form was returned dated 11 March 2023. The director was told he needed to pass identification and verification and as he is abroad to send notarised documents. He then explained he has provided these before in branch. In any event he was added to the account on 20 July 2023. A business internet banking form was completed dated 24 July 2023. This was resubmitted dated 3 October 2023. The director was allowed access to the account through telephone banking on 27 December 2023 and spoke to a member of staff about the account on 28 December 2023.

I'd listened to a recording of that call in which the director explained the history. He was told about the live regular payments on the account. He gave instructions to cancel a number but notably asked that the ISP direct debits not be cancelled as he thought this was for internet access. He was provided with contact details for the businesses involved. He was told that a standing order payment for £100 has gone through and couldn't be recalled. But it seemed to me one such payment was later refunded to the account on 5 January 2024 as a gesture of goodwill. He discussed making a payment to repay a director's loan he made to C and for expenses. I could see that this was made to him from C's account on 30 December 2023.

The information is that the direct debit payments to the ISP were later cancelled on 19 January 2024.

My assessment

I didn't consider that HSBC has been consistent in what it has said about the account. In the final response letter, it seemed to accept what C had said about freezing the account. And that by not doing so it had caused inconvenience. In its submission to this service, it has said that it couldn't accept instructions from a personal representative about a company in any event. But it has then raised direct debit indemnities for C with the reason given that it had been informed of the death of the director and the direct debits should as a result have been cancelled.

I appreciated the difficult personal circumstances for the family of the director of C. And I

needed to be frank also and say that there was no clear contingency plan for C and there was effectively no one with authority to run it for the period until a replacement director was appointed. HSBC cancelled internet banking access as there was no person authorised on the account mandate. HSBC says that it wouldn't as a matter of course cancel regular payments as this may damage the business. Having looked closely at its submission it does seem that there can be discretion to act on a personal representative's instructions depending on the circumstances and especially where there was no director. And in its first assessment of the case seemed to accept it had received these.

I'd also looked closely at the information about adding the director to the mandate. There was clearly the delay until he had been appointed director. But I was struggling to see why this mandate was then not approved and effective until 20 July 2023. He's told this service that he didn't provide notarised identification and it seems that HSBC accepted a further bank statement from him dated 14 July 2023 and another copy of his passport.

There is also an unexplained delay in his access to internet banking which seemed to remain blocked despite two forms being submitted. And it seems from what he says that the security questions for telephone banking for C were those established by his brother. He couldn't pass security for some time. I also needed to highlight that as he explains he was based abroad and so didn't appear to be able to mitigate things by say visiting a branch and was reliant on remote access.

Our investigator has explained her view about the nature of the sole standing order to the account and I agreed with that. C has stated that this related to an agreement about accounting services and has also not wanted to challenge this with the business providing these.

There was clearly a delay before direct debit indemnities were raised under the direct debit guarantee. These had *appeared* to be successful as far as refunds to C is concerned. But I needed to say that these don't necessarily resolve any underlying contractual agreement and deal with outstanding debts. It seems that the reference number for the direct debit from C for the ISP and that on the bill provided for the late director appear to be the same. I was unclear why there is still a bill issued in his name and which has other ongoing entries too. It appears that C was making payments to that account in his name. So, when the amounts were refunded to C through the indemnity they were debited back to his account. As any contractual relationship seems to have been between him and the ISP I wasn't able to deal with that further in any event in a complaint from C. But for context it does seem that this may relate to ongoing services which the ISP has been providing and possibly as part of a contract that wasn't cancelled, and it seems could have been apparent to the personal representatives. That is something I'm afraid that the personal representatives and/or C would need to follow up with the ISP.

I also needed to state that we don't make punitive awards and I'm considering a complaint about C which is a separate legal entity. It can't suffer distress and I won't be able to take into account here what the director says about the stress and inconvenience to him personally.

But there had clearly been poor and inconsistent communication and a delay in providing access for C to the account. I noted that some of those issues were relating to C itself which for a time had no director and then one out of the country. It seemed access to the account was possible after July 2023 although only through a branch. I took into account the time when access was limited and when charges were applied but also that the account remained open. I also noted that C wasn't offered an earlier opportunity to claim the direct debits back

and that this came after HSBC had issued a final response letter to the complaint. I considered that this has caused C additional inconvenience and delayed the outcome further. Having balanced all these factors and taken into account our published guidelines I didn't consider that the compensation paid is sufficient to address all these issues. And so, I said I intended to require HSBC to pay C a further £250 in addition to the other compensation it has paid and the steps regarding the direct debits it has now taken.

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.

HSBC said it accepted my assessment and would pay the further compensation.

The director of C said that he was satisfied with my summary of what happened in the provisional decision to the point where the direct debit indemnities were raised. And that he welcomed the further compensation. But that he didn't consider that C should remain at an overall loss. And that the compensation shouldn't be applied to cover the shortcomings of HSBC. He said that it should have contacted him when it decided it couldn't stop the standing order and the direct debits. The business of C was effectively his brother and so there was no harm in taking action and making a short call to his representatives to deal with this.

C said it has done further analysis of the payments from the account and what has been refunded. It said that all had accepted that the standing order wouldn't be refunded. But it said that while some direct debit originators have given slight excess refunds possibly linked to the exact date used, the ISP refunded £843.50 out of total charges of £1,345.20. And then as set out above has re-debited the amounts it has refunded. C said that it could see why this was out of my ability to arbitrate on but wanted to know why only part of the monies had been refunded.

C also didn't think that it should pay £130 of bank charges to HSBC over the period when it couldn't have full access to the account and after January [2023].

I took into account that there were ongoing bank charges when making my provisional decision. I said that the account had remained opened. The new director wasn't in place until January 2023 and the mandate submitted dated March 2023. After July 2023 the account could be operated although not online or by phone and the director appointed to operate the business of C was based abroad. I consider I had already factored in the element of inconvenience in my assessment linked to different ways of accessing the account. And I note that it was potentially open to C to mitigate losses after July 2023 and to manage the account. So, I won't be requiring that any bank charges be refunded.

I took into account in my provisional decision that there was an opportunity for HSBC to contact representatives of C and also to have offered to raise direct debit indemnities at an earlier point. It has told this service it has done so while the complaint has been investigated. I also set out why these may not resolve contractual issues or necessarily have been more successful. With regard to the ISP, I could see that the re-debit had been made to an account in the personal name of the late director and which seemed to continue to be active and that this would likely be apparent to the personal representatives. I'd also noted that C had the opportunity to cancel these direct debits it seems a month earlier during the call with HSBC I referred to above and declined to do so saying that these may relate to internet services. It also had access to the account although as accepted only through branch from July 2023. And having reviewed all comments made before I also note that on 27 May 2024 the director had contacted this service to say that there had already been a refund of £162

plus VAT from the ISP which had been accepted and which he believed was a gesture of goodwill.

I have reviewed and balanced the submissions and information provided in response to my provisional decision in addition to everything provided before. I'm afraid I don't consider I have a reasonable basis to require HSBC to do more than I set out. This is for the reasons I gave in my provisional decision and taking into account what I've said above. I remain of the view that a further £250 in compensation is fair to resolve this complaint.

My final decision

My decision is that I uphold this complaint in part and require HSBC UK Bank Plc to pay C a further £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 11 November 2024.

Michael Crewe
Ombudsman