

The complaint

Mr T complains that HSBC UK Bank Plc is not allowing him to make an additional permitted subscription (APS) in-specie. He says this will cause him a financial loss, inconvenience and time out of the market.

What happened

In February 2024 Mr T wrote to HSBC to explain that, among other issues, he had identified that it didn't allow him to make an APS in-specie from his late wife's stocks and shares ISA. He said that HMRC rules allowed such a transfer, as did at least two other providers. HSBC looked into his concerns and said that:

"Whilst HM Revenue and Customs allow in specie transfers, it isn't mandatory for ISA Managers to offer this. We've therefore made the business decision to only offer APS transfers as cash".

Mr T remained unhappy and referred his complaint to this service. One of our investigators looked into his complaint but didn't think it should be upheld. In short, she said the rules didn't specifically say that ISA managers had to allow an in-specie transfer and so HSBC wasn't doing anything wrong by not allowing it.

Mr T didn't agree and asked for an ombudsman's decision. In summary:

- He said that HSBC had confirmed that its APS investment transfer process (sale and buy back) could take up to 30 days and that he would be out of the market for five working days. He said other providers turned things around much quicker.
- He wasn't convinced that HSBC was allowed to deny him the option of transferring in-specie. He said that it was clear HSBC had made a "business decision" but it wasn't clear that it was "empowered to do so".
- He said HSBC's decision would cost him around £600 plus any out of market repercussions, when this needn't be the case with an in-specie transfer. He also said that ultimately, his late wife's stocks and shares ISA remained a stock and shares ISA, which HSBC's terms clearly allowed in-species transfers for.
- Ultimately, Mr T believed he had an "unqualified right to select an in-specie transfer" whereas HSBC were simply refusing this option, even though this would provide a better outcome for him (and a cost saving), whilst not costing or impacting HSBC in any way given both accounts were with it.

I issued a provisional decision in November 2024. In it I said that I thought HSBC hadn't treated Mr T fairly. I said:

"I think Mr T has been treated unfairly. In my view, HSBC is not acting in line with its obligations and this has likely caused Mr T to miss the opportunity to transfer in-specie. This means that Mr T, if he hasn't already, will need to incur additional costs to make the APS."

Although HSBC has said that it was its business decision to decline to allow in-specie APS transfer and that HMRC rules don't specifically say it must allow this, it did have to comply with existing rules around the way it treated its customers.

The Financial Conduct Authority's (FCA) High Level Principles set out the standards which the FCA expects of firms. PRIN 6 "Customer's interests" says that "a firm must pay due regard to the interests of its customers and treat them fairly". PRIN 12 says that "a firm must act to deliver good outcomes for retail customers".

HMRC guidelines to firms on managing APS say:

"How non-cash assets are used

Non-cash assets are:

- Any stocks and shares ISA*

(...)

Where a surviving spouse or civil partner inherits non-cash ISA assets, these may be used to make an additional permitted subscription 'in specie' (without having to be sold and the subscription made in cash) if these assets were the ones held at the date you were told of the death of the investor."

There are some other conditions, but at the time of Mr T's request, all other conditions were met. I've not quoted the terms of Mr T's account, but it is not in dispute that HSBC does accept in-specie transfers from ISAs held with other providers and accepts to carry out in-specie transfers to other providers. It is only in the context of APS that it does not do so.

HSBC has not provided any reasoning or explanation for why it has made this business decision. But in making decisions about the services it offers to its customers, it's clear to me that HSBC needed to take into account the above Principles, as well as all its other obligations. It isn't for me to say whether HMRC's guidance to managers on APS is intended to suggest that ISA managers ought to accept in-specie APS transfers, or whether the fact that it doesn't specifically say the contrary, ISA managers are entitled to decline in-specie transfers. To my mind, this isn't the key question.

The key question is whether, in all the circumstances, HSBC's decision to accept Mr T's APS, but to decline to do so in a way that is permitted by HMRC and which minimises both the costs and inconvenience to him, is fair and reasonable. In reaching my decision, therefore, I have taken into account HSBC's right to make business decisions and to decide how to run its affairs. But I've also taken into account the principles above and this key question.

I'm persuaded HSBC's decision is unfair. Mr T can only request an APS in-specie transfer from HSBC. So by denying him this request, it is in effect forcing Mr T to go down a more expensive and inconvenient route. Furthermore, it isn't treating him fairly because for any other type of stock transfer, HSBC allows in-specie transfers – even arguably those which involve more inconvenience to it, for example transfers in from other providers.

In Mr T's case, his late wife's holdings were likely already held with an HSBC nominee – and so the change would involve some administration in updating its own nominee records. I can see no inconvenience, cost or other reason why HSBC would be disadvantaged by giving Mr T this option. On other hand, as Mr T has clearly explained, declining to allow his transfer in this way impacts him financially.

Unfortunately, given the situation, it seems that the timeframe during which HSBC could've carried out such a transfer in this way has now passed. This means that the only way to put matters right for Mr T is to make an award, and so this is what I intend to do:

- *Pay Mr T £250 for the distress and inconvenience its decision has caused him and will cause him in future when he decides to repurchase the shares;*
- *Reimburse Mr T for any costs incurred in the repurchase of investments sold and transferred as cash.*
- *Reimburse Mr T for any loss of growth on any investments which were sold and increased in value between the sale and the repurchase.*

Since Mr T is intending to carry out this transfer between HSBC accounts, this information ought to be relatively easy for it to find."

Mr T agreed with my provisional decision but reiterated his preferred option was for an in-specie transfer and said he thought this was still possible.

HSBC didn't agree with my provisional decision. In summary it said:

- Its understanding of the relevant rules and legislation was that it wasn't obliged to accept APS at all – and many providers didn't. It said APS was "just one of the many things that are optional under ISA rules, which ISA managers can make their own decision to offer or not at their own discretion".
- It acknowledged the "cash journey was an inconvenience to customers" but it was concerned the decision "potentially sets a precedent whereby we are effectively forced to offer something which we are not obliged to under HMRC rules".
- It said the reason it didn't offer in-specie APS was due to "system and resourcing constraints" which this service normally concludes are "legitimate business considerations". It said it didn't understand why I had departed from this position in this case.
- It said that it was willing to seek to find a solution with Mr T but outlined the challenges it faced in making this happen. It reiterated that it didn't think it had made an error in this case and there was no obligation to offer in specie transfers in this instance. This was a business decision which the service would not normally interfere with.

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 not been persuaded to change my provisional findings and confirm them here as final.

I should be clear that I'm not looking to interfere with HSBC's business decisions. I've not recommended it change this decision and I've not made a finding about whether HMRC's guidance obliges ISA managers to give effect to in-specie APS.

But none of the comments HSBC has provided go to the heart of this complaint – namely whether HSBC's decision to *accept* Mr T's APS, but to decline to do so in a way that is permitted by HMRC and which minimises both the costs and inconvenience to him, is fair and reasonable.

In my provisional decision I specifically acknowledged HSBC's right to make business decisions, but I also explained that the way it treated its customers also needed to be consistent with the High Level Principles I set out. In my view this applies both to the decisions it makes when dealing with its customers and, importantly, on the impact those decisions have – particularly in the context of facilitating an APS.

In my view those Principles required it to consider Mr T's circumstances and ensure that he was treated fairly and not just rely on its process when declining to give effect to his request for an in-specie APS. It's important to highlight that Mr T's ability to make use of in-specie APS was only available with HSBC and that HSBC does accept in-specie transfers in general, just not when accepting APS. It isn't my role to second guess what constraints HSBC says apply to in-specie APS specifically – but I do note that it made no other attempts to work with Mr T or find a solution, such as the one I provisionally awarded, which would've essentially minimised or removed, as far as possible, the inconvenience and the costs to him.

So I remain of the view that declining to accept an in-specie APS in Mr T's case, which would've minimised both the costs and inconvenience to him and is clearly envisaged in guidance to ISA managers, without taking any steps to minimise the impact on Mr T, was not fair and reasonable. In other words, it is the decision in relation to Mr T's circumstance and the impact of that decision on Mr T specifically that I'm concluding is unfair – and it's this that I am putting right.

For the reasons I gave in my provisional decision and those that I've given in this final decision, I'm persuaded this complaint should be upheld.

Putting things right

In order to put things right, I consider HSBC ought to find a way to give effect to Mr T's wishes and facilitate an in-specie APS. If it can do this, then I'm satisfied it only need to pay Mr T £250 for the distress and inconvenience pursuing this matter has caused him.

On the other hand, if it cannot, then I consider it needs to:

- Pay Mr T £250 for the distress and inconvenience its decision has caused him and will cause him in future when he decides to repurchase the shares;
- Reimburse Mr T for any costs incurred in the repurchase of investments sold and transferred as cash.
- Reimburse Mr T for any loss of growth on any investments which were sold and increased in value between the sale and the repurchase. In order to claim for any loss under this heading, Mr T must make sure he repurchases the relevant investments as soon as reasonably practicable (i.e. within a day of the cash being transferred into his own ISA via APS).

Since Mr T is intending to carry out this transfer between HSBC accounts, this information ought to be relatively easy for it to find.

My final decision

My final decision is that I uphold Mr T's complaint. HSBC UK Bank Plc must pay the compensation I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or

reject my decision before 9 January 2025.

Alessandro Pulzone
Ombudsman