

complaint

Mrs C's representatives under a Power of Attorney, Mr and Mrs D, complain on her behalf that HSBC Bank Plc gave incorrect advice about how they could act on her behalf. This meant they incurred, on Mrs C's behalf, solicitors' fees.

background

Mrs C held a current account and a dormant Individual Savings Account (ISA) with the bank. In 2012 Mr and Mrs D wished to make a transfer of the money on Mrs C's behalf from the current account to the ISA. Mr D went to the bank's branch. The bank told him to complete an ISA application form on Mrs C's behalf. Mr and Mrs D say the bank guided Mr D as to how to complete the form.

The completed form mentioned Mrs C was suffering from dementia and that was why the form had been completed by Mr D. The bank then wrote to Mr and Mrs D to say that the Power of Attorney required registration with the Court of Protection due to a change in circumstance. Mr and Mrs D queried this with the bank. They say that the bank told them there may have been a change in the law requiring registration.

Mr and Mrs D then consulted a solicitor who advised them that this was wrong. He said they should inform the bank of the correct position - that Mrs C's incapacity was a physical one and send medical evidence to support this.

Mr and Mrs D did this. But the bank kept on asking for registration with the Court of Protection. Eventually the bank did agree to make the transfer without registration of the Power of Attorney. Following a complaint to the bank, HSBC agreed to pay the lost interest. The representatives asked the bank to pay their costs. The bank did not agree to pay any legal fees for the solicitor since it said it was the representatives' choice to consult a lawyer.

our adjudicator's view

The adjudicator recommended that the complaint be upheld. He said that the bank had not been pro-active in dealing with the confusion and contacting the representatives. He said it was fair and reasonable to order the bank to pay £100 to Mrs C. He did not think that the bank should pay Mrs C's legal fees, incurred on her behalf by Mr and Mrs D since they had made the choice to consult a solicitor. Mr and Mrs D did not accept the adjudicator's view, as they felt they had no choice but to involve a solicitor.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr and Mrs D and to HSBC Bank Plc dated 18 December 2013. I summarise my findings as follows.

Mr D went to the bank for advice in April 2012 on how to complete the necessary form. I found that the bank did not give the appropriate and correct advice. It also did not pick up the issue on any check of the form at the branch. Mr D was told the transfer should go ahead in a couple of days.

The bank felt that the information revealed a change in circumstances. Mr and Mrs D attempted to clarify issues with the bank but it did not assist them in doing so.

As a result, I felt it was reasonable for Mr and Mrs D to seek legal advice in this complicated area of law. But when they did so the bank was slow to accept the correct position. The solicitor became involved in chasing the bank for a decision.

I decided it was fair and reasonable for the bank to have to pay Mr and Mrs D some of the costs of instructing a solicitor. However I also decided that, once the solicitor had given Mr and Mrs D the correct advice, they could have done some of the chasing without involving the solicitor.

Subject to any further representations by Mr and Mrs D or HSBC, my provisional decision was that it was fair and reasonable for the bank to pay Mr and Mrs D, on behalf of Mrs C, a contribution towards their legal costs, to allow for the initial consultations and letters written on their behalf. I considered that the bank should make a contribution of £500. This was in addition to its offer of £100 for distress and inconvenience.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Both Mr and Mrs D and HSBC Bank Plc have accepted my provisional decision. I therefore see no reason to depart from the conclusions I reached in that provisional decision and I confirm them here.

my final decision

My decision is that I uphold this complaint and I order HSBC Bank Plc to pay Mrs C, in addition to the interest it has already refunded:

- A contribution of £500 towards solicitor's fees her representatives incurred on her behalf; and
- £100 for distress and inconvenience

Paul Moulder
ombudsman