

complaint

Mr D complains that HSBC Bank Plc lost some papers from his safety deposit box.

background

Mr D says he was told to collect his belongings from a safety deposit box held by HSBC. When he did so he noticed that some legal papers, including Power of Attorney documents, were missing.

HSBC said in its final response that it'd established that two Power of Attorney documents weren't present when it gave Mr D the documents in its safekeeping. Despite its best efforts it hasn't been able to locate them or evidence they'd been given to Mr D earlier. As a result it'd paid £1,468 into Mr D's account for the additional solicitor's costs he incurred getting replacement documents. It'd also offered him £600 compensation for the distress and inconvenience caused. But Mr D hadn't accepted this offer.

our investigator's view

Our investigator issued a number of views in which he felt this complaint should be upheld. In summary he said:

- HSBC has paid Mr D £1,468 to cover the costs of replacing the missing Power of Attorney documents.
- HSBC should also meet the cost of replacing two lost wills which would be between £120 and £175 plus VAT each and the cost of getting a copy of a third will. It should also cover the cost of getting some copy property documents from the Land Registry at between £2.50 and £7 each. And if Mr D still owns one particular property a copy of the NHBC guarantee which will cost no more than £50. And also the cost of getting a copy of a share loan agreement if it still binds Mr D.
- It should also pay Mr D £600 for the distress and inconvenience he's been caused.

Mr D remained unhappy. He said he wanted his out of pocket expenses covered and that he hadn't received an apology from HSBC. The lost sealed envelopes contained personal items which have a sentimental value. This matter has affected his health. He wants more and substantial compensation for the time this has taken and the distress caused. He wants a written apology and said HSBC has been negligent.

HSBC accepted the investigator's recommendation to pay Mr D £600 compensation and at one point said it reluctantly agreed to cover the cost of replacing some of the other documents if Mr D could provide legitimate estimates.

But HSBC more recently said that Mr D is attempting to claim for the replacement of documents there's no evidence it ever held. Its records show it held two sealed envelopes with unknown contents. Some of the documents Mr D now says he wants replacing were duplicates, obsolete or weren't separately identified as being received by the bank. It can't bear the cost of replacing documents that he cannot prove it lost. It has no record of holding the wills the investigator mentions and the other documents referred to by Mr D in a schedule are marked in its records as Given Up by the branch. That's apart from the powers

of attorney for which it's already provided compensation for Mr D's replacement costs. It's also said that Mr D has caused much of the delay himself. It still thinks the £600 compensation offered is fair.

my provisional decision

I issued a provisional decision in this complaint on 17 July 2019. In summary, subject to any further evidence and submissions from the parties, I was minded to uphold the complaint. But I didn't think I could fairly or reasonably ask HSBC to now do anything differently or to pay Mr D more than £600 compensation.

Each party has confirmed it received my provisional decision but neither has made any further submissions or provided any additional evidence.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is more likely to have happened than not.

Mr D has provided extensive and detailed submissions to support his complaint. I've read and considered them all. But my findings are expressed in considerably less detail and will focus on the matters that are still in dispute, on what I think are the main issues and what, if anything, I think HSBC should now do to put things right.

HSBC acknowledged early on that it'd lost the powers of attorney documents. It agreed to reimburse £1,468 to cover Mr D's solicitor's costs of replacing them. And it's already credited this amount to him. I think that was fair and reasonable.

Mr D has submitted a schedule listing around 17 other documents he says HSBC lost. But he subsequently agreed some of them were duplicates or had become obsolete. HSBC has recently checked its records and says only some of the documents were held but they are marked as having been returned or Given Up to Mr D. And the remainder were never held by it in the first place.

Taking all the available evidence into account I don't think on balance that I can fairly or reasonably conclude HSBC has lost any of these documents as Mr D suggests. Some don't appear to have been held by it and the remainder it did hold appear to have most likely been returned to Mr D.

Furthermore the investigator has already given Mr D sufficient opportunity to provide HSBC with reasonable figures, on solicitor's headed notepaper, for the cost of replacing the documents he says were lost. And subject to that HSBC, albeit reluctantly, agreed at one point to consider and meet any such costs. But the schedule and costs Mr D subsequently submitted weren't supported by a solicitor and didn't give anything more than what appears to be his general estimates of the costs of replacing the items totalling £5,000.

Taking everything into account I don't think that was sufficient or adequate proof of any potential document replacement costs. And I've seen nothing to suggest these estimates are fair or reasonable. Consequently I don't think I can ask HSBC to now pay all or any of these

estimated costs even if the documents could be shown to have been lost, which doesn't appear to be the case as I've set out above.

Our investigator specifically referred in his views to some individual documents from Mr D's schedule that he thought, on the information available to him at the relevant times, might've been lost. And he suggested HSBC may have to pay for their replacement. But for the sake of completeness I will explain below, based on the up to date evidence I have, why I don't now think this would be fair.

The investigator said HSBC should meet the cost of replacing two wills and getting a copy of a third. But since the investigator's views HSBC has re-examined its branch records. It says they show that it never held them. Taking everything into account I accept this and I don't think it's been shown on balance that these wills were ever likely held by HSBC or subsequently lost by them. As a result I don't think I can reasonably require HSBC to meet the costs of replacing the two wills and getting a copy of a third as the investigator suggested.

The other possible replacement costs mentioned by the investigator were conditional and related to property documents and a share loan agreement. But I have seen nothing to suggest Mr D is still the owner of the relevant properties and so I don't think HSBC should have to bear the costs of getting copy Land Registry documents or a replacement NHBC certificate on one particular property. There's also nothing to show Mr D is still bound by the share loan agreement made some 40 years ago. And again I don't think on balance that I can fairly or reasonably ask HSBC to bear any costs relating to that.

Mr D also says lost sealed envelopes contained personal items of a sentimental value. Regrettably that may well be the case. But HSBC wouldn't have been aware of the contents of those sealed envelopes. In addition its terms and conditions of deposit clearly say it doesn't accept any liability for their loss. It's also impossible to put a monetary value on these items. So, I don't think I can fairly or reasonably ask HSBC to pay Mr D any compensation for these two lost envelopes or their contents.

Overall I have carefully considered everything that Mr D has said and submitted. But on the available evidence I don't think he's shown on balance that HSBC should be required to meet any of the document replacement costs identified by the investigator in his views as being potentially payable.

Even so its clear Mr D has been caused some distress and inconvenience by the loss of the Powers of Attorney and what's happened as a result. HSBC has pointed out that Mr D has likely contributed at times to some delay in matters being resolved. And I also think that by putting forward claims for some duplicate and obsolete document replacement costs, he has likely contributed to the length of time the complaint has been going on for and the stress he's been caused. Mr D says his health has suffered but I've seen nothing from any medical expert supporting this or relating it directly to the loss and replacement of the power of attorney documents.

Taking everything into account, including the level of awards we make, I think a payment of £600 compensation is a fair and reasonable award to cover the distress and inconvenience Mr D has experienced particularly from the loss of the powers of attorney and taking steps to replace them. That's in addition to the £1,468 HSBC has already paid to cover the costs of replacing the missing Power of Attorney documents.

Mr D also says he wants compensation for his out of pocket expenses. But I think this award reasonably covers any incidental and out of pocket expenses he might've incurred in putting things right. Mr D mentioned at one stage in his submissions expenses incurred by his family members. But as they aren't parties to this complaint I cannot consider their suggested losses or require HSBC to reimburse them.

Mr D wants a written apology. But that's not something I can require HSBC to give him. Mr D also says HSBC was negligent. But that's not something this service can consider. That's something only a court can decide.

I recognise Mr D's strength of feeling and frustration. But for the reasons I've outlined above I don't think I can fairly or reasonably ask HSBC to now do anything differently or to pay him any more than £600 compensation.

my final decision

I uphold this complaint. To put things right HSBC Bank Plc should, if it hasn't done so already, pay Mr D £600 compensation.

If it hasn't already done so, HSBC must pay the compensation within 28 days of the date on which we tell it Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If HSBC considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 October 2019.

Stephen Cooper
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