

## **complaint**

The estate of the late Mr J through its solicitors M complain that HSBC Bank plc acted unfairly and unreasonably in saying that it didn't hold the deeds to his property when it did. The estate wants HSBC to compensate for the legal costs caused by its actions paid for by a relative of Mr J.

## **background**

Mr J had a property and the deeds were held by HSBC. From 2012, his solicitors M were instructed to deal with the property. The property wasn't registered at the Land Registry, so the deeds were essential. When Mr J asked a branch of HSBC for the deeds in May 2015, he said HSBC didn't have the deeds. Mr J returned to the branch with a family member in July 2015; he said that HSBC said that it didn't have them and that there was no record of HSBC ever having the deeds. Mr J then had a general power of attorney ("POA") drawn up by a solicitor so someone else could get the deeds from HSBC and deal with his affairs as he had cancer and was seriously unwell. He said that the branch wouldn't accept the original POA, even after M contacted it. HSBC admitted in October 2015 that it had the deeds in its possession after Mr J died and his family found evidence HSBC held the deeds.

M complained to HSBC. It said Mr J didn't ask for the deeds when he attended the branch and would've been told to contact the regional business manager. HSBC also said M didn't give the branch a certified copy of the POA with every page signed which was legally required. HSBC also said the attorneys needed to prove their identity under the money laundering regulations, so it wasn't unreasonable for it to refuse to accept the POA. It said it was willing to discuss the issue of Mr J's legal fees.

M complained to us, pointing out Mr J had a witness to him asking for the deeds and HSBC had been given the original POA so a certified copy wasn't required. The adjudicator's view was that HSBC was at fault. She thought the branch had told Mr J twice HSBC didn't have the deeds as at the time it had stopped holding deeds for customers and it was more likely than not Mr J had asked the bank about the deeds. The adjudicator thought it was fair and reasonable for HSBC to pay the legal fees incurred by M trying to find the deeds from 14 July 2015 to 29 October 2015. She didn't think earlier legal fees or work to register the title or dealing with the POA should be paid by HSBC because registration and the POA was needed anyway. The adjudicator also thought M should've known the POA needed to be certified on each page.

M disagreed. It accepted that it prepared several different powers of attorney for different reasons, but the general POA was only prepared because HSBC wouldn't release money from Mr J's account without it and to enable the sale of the property. The money was needed to deal with the problem of the missing deeds. M accepted the rest of the adjudicator's view but pointed out it had to carry out work to register the property before HSBC said it had the deeds. The adjudicator said the general POA was needed to access Mr J's accounts and so wasn't just prepared due to the missing deeds. She asked for more information about the work done to register the property after HSBC said it didn't have the deeds. M sent another copy of their invoices and information about all of the work it had undertaken in relation to the property.

HSBC also disagreed with the adjudicator. It said that there was no record of any visit to the branch by Mr J in May or July 2015 to discuss deeds, but if asked in a branch staff would tell a consumer to contact the relevant centre dealing with such queries. The adjudicator said as

the conversations were in the banking hall, it wasn't surprising HSBC didn't have a record and its staff couldn't remember any such conversation. But as Mr J and his relative did remember the conversations, the adjudicator preferred their account. HSBC also pointed out the POA needed the attorneys to prove their identity and the solicitors needed to certify each page of the POA. The adjudicator accepted this.

### **my provisional decision**

In my provisional decision, I set out why I intended to uphold the complaint, and also why I had a different view to the adjudicator. I said:

"The core of this complaint is what happened when Mr J attended the branch of HSBC on two occasions in 2015, the second time with a relative. I wasn't present during those conversations; unfortunately Mr J has now passed on and I haven't heard the relative's version of events. I only have the information received from M, and HSBC's denial of any such conversation taking place and statement that its staff would tell consumers to contact the relevant centre. I don't think it's likely that HSBC would have a record of general conversations between its staff and consumers in branches, but that doesn't mean the conversation didn't happen.

The adjudicator has accepted the account from M in full, but I can't. I think it's more likely than not Mr J did visit the branch twice and was told that the deeds weren't stored there. But I also think it's more likely than not the staff told him to contact the centre as HSBC hasn't held deeds for some time. It's possible on one of the visits to the branch Mr J was told simply that the deeds weren't in the branch and no-one told him to contact the centre, but as it's standard practice for the centre to deal with deeds, I think it's unlikely this wasn't mentioned by HSBC. I can't find as a fact that HSBC didn't tell Mr J to follow the normal procedure based on the evidence available to me. I think though it's more likely than not HSBC failed to clearly explain its procedure to Mr J as I believe that he left the branch believing HSBC didn't have the deeds.

M had been dealing with issues to do with the property since 2012, including applications for adverse possession and trying to find various deeds. It wouldn't be fair or reasonable for HSBC to be responsible for the costs of this work as it wasn't caused by the conversations with Mr J in the branch during 2015. I also note Mr J wasn't invoiced for this work, and this service only deals with the financial loss suffered by the actual consumer. It's fair and reasonable for HSBC to expect a solicitor to write to it and formally request the deeds, which didn't happen until October 2015. When M did this, the deeds were sent promptly. I've also seen the draft statement prepared for submission to the Land Registry about the property, and it doesn't mention at all HSBC losing the deeds. This doesn't make sense if Mr J believed HSBC had the deeds and had lost them as this is information the Land Registry would expect to be told.

M hasn't provided evidence that the work undertaken regarding the property was caused by HSBC failing to admit that it held the deeds in May or July 2015. It has shown that when formally asked for the deeds, HSBC provided them promptly. Registration of the property isn't connected to HSBC and the deeds – this was required to sell the property.

The POA wasn't created due to the issue with the deeds in my view, but to enable access to Mr J's accounts and to later sell the property. Access to the bank account wasn't needed due to the actions of HSBC as a third party was paying Mr J's legal fees. I note the POA was not certified on each page as required by the relevant law to be effective. I also don't think

HSBC acted unfairly or unreasonably in requiring the attorneys under the POA to prove their identity given money laundering regulations and the need to be sure it was dealing with the actual individuals named in the POA. In the circumstances, I don't think it would be fair or reasonable for HSBC to pay any of the legal costs, including the costs of the POA.

But I do think HSBC could've explained much more clearly to Mr J what he needed to do to get his deeds. I think this did cause him trouble and upset, though it's difficult to work out how much as I've no evidence on that issue. I think £250 compensation is fair and reasonable as Mr J visited the branch twice, which suggests the first visit didn't deal with all of his queries."

### **my findings**

Neither party responded to my provisional decision. I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think my provisional decision was fair and reasonable, and I will therefore confirm it as final.

### **my final decision**

My final decision is that I uphold the complaint and HSBC Bank plc should pay the estate of Mr J £250 compensation. Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of the late Mr J to accept or reject my decision before 21 September 2017.

Claire Sharp  
**ombudsman**