<u>Ombudsman Decision</u>
<u>CIFO Reference Number:</u> 25-000036
<u>Complainant:</u> Mrs K
<u>Respondent:</u> HSBC Bank Plc, Jersey Branch

Complaint

The complainant, who I'll refer to as 'Mrs K' complains that HSBC Bank Plc, Jersey Branch failed to honour its offer to backdate interest on a fixed term deposit (FTD) account she wished to set up following her move to the United States.

Background

Mrs K says she first spoke to HSBC about arranging a FTD in April 2023, after she moved to the US. HSBC has provided details of a call in September 2023 where she specifically requested this. But this couldn't be done immediately as her move had triggered a requirement for US tax reporting for the bank to comply with the Foreign Account Tax Compliance Act (FATCA). This act sets out the legislative framework for international banks where a customer has US connections and stipulates the reporting and sharing of information banks are required to undertake to comply with the regulations. Part of this requirement is for customers with US connections to complete mandatory forms, including the Common Reporting Standard (CRS).

[1] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

From this point, Mrs K's request to set up a FTD was dependent on the FATCA and CRS forms being completed and accepted by HSBC. The CRS forms were confirmed as correct by HSBC on 23 January 2024. But, unfortunately due to her not having a Tax Identification Number (TIN) or social security number, the FATCA forms were only confirmed as complete on 2 August 2024. I understand the FTD account Mrs K had requested was then set up on 11 October 2024.

In response to Mrs K's complaint, HSBC accepted the FTD could have been established when completed forms were received on 2 August 2024. To compensate Mrs K for the fact this didn't happen, it paid backdated interest covering the period from 2 August to 10 October 2024 (totalling USD 707.00) and additional compensation of USD 100 as a goodwill gesture for the inconvenience caused by this error.

My Provisional Decision

After reviewing the evidence carefully, I concluded the complaint should be upheld in part and that HSBC should pay Mrs K additional compensation of USD 400 on top of the amounts already paid. I issued my provisional decision setting out the reasons for my findings as follows:

> *Mrs K maintains she was in discussion with HSBC regarding a FTD from April 2023 and has provided an email from July 2023 which she said demonstrates ongoing discussions with the bank. But this simply refers to setting up a call to discuss the other services available through HSBC Expat and doesn't mention setting up a FTD or other specific type of account. The first evidence I've seen of a request to set up a FTD was during a call in September 2023.*
>
> *I accept that there may have been discussions about an FTD before but I can't establish that this was specifically requested by Mrs K before September 2023. In any event, I think any discussion about exactly when Mrs K asked HSBC to set up a FTD is unlikely to be relevant here. This is because says she'd already moved to the US by April 2023. So, the same requirements to establish a new account would have applied if she'd requested HSBC to set up a FTD sooner and it's not clear she'd*

have been able to obtain the information required to fulfill those requirements any sooner.

I'm satisfied HSBC couldn't have established a new account for Mrs K before correctly completed forms were received in August 2024. I realise Mrs K had only recently moved to the US and may not have been fully aware of its taxation requirements, but the responsibility to provide correctly completed documentation was ultimately hers. HSBC wasn't required and I wouldn't have expected it to provide her with detailed US tax advice, including on the completion of the required documentation, beyond the generic information contained on the sources it referred her to on a number of occasions. Bank staff also repeatedly explained that they weren't able to provide tax advice.

Mrs K has referred to assurances she received about backdating interest once the bank was aware of her intention to open a FTD. After carefully reviewing the evidence she's pointed to, the email dated 26 July 2023 makes no mention of a particular product or the backdating of interest. Nonetheless, this is mentioned in the email of 11 October 2023, which was sent after HSBC confirmed it was unable to accept the forms she'd submitted as information was missing, when the bank's agent said:

> *In regards to the Fixed Term Account, I would also not be able to back date it to the beginning of the year. I can only back date it to when we spoke first regarding the account.*
>
> *I look forward to receiving the newly dated form soon.*

While this does constitute an offer to backdate interest, I believe it's also clear this was made on the basis that fully completed forms would be received 'soon'. As it turned out, fully completed forms weren't received until August 2024, nearly 10 months later, and I don't think it's fair to expect the bank to honour its original proposal following such a lengthy delay.

I appreciate not having a single point of contact throughout this process would have been frustrating. But this complaint relates to events that took place over more than a year, during which time it's not surprising that some members of staff moved on, and involved multiple HSBC departments. As such, I don't find it unreasonable that Mrs K was unable to correspond with the same person throughout. Further, I think the messages provided by the staff she did deal with were broadly consistent and I don't think having a single point of contact would have made any significant difference to the final outcome.

I note Mrs K's comments that HSBC didn't advise her to withdraw her funds or place them elsewhere. But I've not seen any evidence to demonstrate she asked for such advice either. Further, and perhaps more importantly, I don't think the bank could reasonably have expected this process would take as long as it did and it's not clear what other options it could have offered anyway as fully completed FATCA forms were required to open a new account.

On balance, and taking all of the above into account, I don't find that HSBC should be required to pay backdated interest from any earlier than 2 August 2024 when it received fully completed forms and was in a position to meet Mrs K's request to open a FTD. So it follows that I'm satisfied the additional interest the bank has already paid is a fair and reasonable settlement to this part of the complaint. And I agree that compensation of USD 100 for any additional distress and inconvenience caused because the fact the FTD wasn't opened when it should have been.

The above notwithstanding, I do have some concerns about the service Mrs K received from HSBC before August 2024. When submitting its file of evidence, the bank said:

> *I do want to note that there have been service failings during Mrs K's interactions with HSBC Expat during the period where tax requirements were outstanding. There are several instances whereby Mrs K had to contact HSBC Expat multiple times, by both phone and email, in order to get a response. HSBC Expat*

wants to provide a sincere apology to Mrs K as this is not the level of service we expect or strive for. I do want to make it clear that the service failings noted did not have an impact on the ability to open a Fixed Term Deposit, as the root cause remains the provision of the required forms.

I agree the service failings described weren't the cause of the delay in setting up the FTD. But the amount and content of the communications between Mrs K and HSBC shows how important this situation was to her and I believe the service failings the bank has accepted took place over a protracted period would only have cause her additional and unnecessary distress and inconvenience. HSBC's apology in this instance is welcome but I think Mrs K should also be compensated for this.

It's for these reasons that I'm proposing to partly uphold this complaint. While I don't agree that HSBC should be required to pay backdated interest as requested by Mrs K, I do believe it should compensate her for the unnecessary distress and inconvenience caused by its service failings.

The Responses to my Provisional Decision

Mrs K didn't accept my assessment. She doesn't believe the compensation proposed for her distress and inconvenience is sufficient. She said the service failures she experienced weren't isolated or short-term, instead they occurred over a period of more than a year at a time when she was particularly vulnerable following her recent migration. And that she was required to make repeated calls and send numerous emails, explain her situation to multiple different staff members, and endure long periods without response about a matter involving a substantial portion of her family's savings.

HSBC confirmed it had nothing further to add.

My Findings

I’ve carefully considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. In considering what’s fair and reasonable, I’ve had regard to the relevant law and regulations; any regulator’s rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

In setting out my decision, I haven’t necessarily mentioned or addressed every point raised by the parties. Instead, I’ve concentrated on the key issues that I think are central to the outcome of the complaint. This is in keeping with our established purpose to act as an informal alternative to the courts.

Where necessary or appropriate, I’ve reached my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the available evidence and the wider surrounding circumstances.

The amount to award a consumer for any distress and inconvenience suffered can be difficult to assess as the same set of circumstances can affect different people in different ways. In assessing what represents fair and reasonable compensation for HSBC’s service failings in this case, I have taken account of all the circumstances, including those factors specifically identified by Mrs K. Having done so, it remains my view that further compensation of USD 400 (in addition to the USD 100 already paid in respect of delays between August and October 2024) is an appropriate amount and in line with what we tend to award in cases of this nature.

My Final Decision

My final decision is that I uphold this complaint. Subject to Mrs K’s acceptance, HSBC Bank Plc, Jersey Branch should now pay her further compensation of USD 400.

Jim Biles

Ombudsman

Date: 16 February 2026