

The complaint

Mr C's son (R) brings a complaint on behalf of his father against HSBC Bank PLC (HSBC). It relates to him providing an Enduring Power of Attorney (EPA) to HSBC in respect of his father, and having done so HSBC freezing his father's account, resulting in 2 direct debits (DD) being unpaid and him having no access to the account for a period of around 4 weeks.

What happened

Our investigator's background summary covered all the relevant facts and issues, and is known to both Mr C and HSBC, so there is no need for me to repeat it here in any detail. Instead I will focus on giving the reasons for my decision. So, if I've not mentioned something it's not because I've ignored it, rather it's because I don't think it's of direct relevance to the issues I need to deal with.

Mr C made an EPA appointing his daughter, and R as his attorneys. R decided to register the EPA with Office of the Public Guardian (OPG) but at the point of registration did not advise HSBC. Sometime later he did submit the registered EPA to HSBC but importantly told them that his father had not lost the mental capacity to conduct his own affairs. When the EPA was sent for processing, HSBC assumed Mr C had in fact lost his mental capacity and then followed their procedures for such an event. That included freezing the account and two DDs not being actioned.

When R notified HSBC that his father retained capacity and asked for the account to be unfrozen, HSBC's legal dept became involved. They advised that R could contact the OPG to arrange for the EPA to be de-registered, or a letter obtained from Mr C's GP to confirm her had regained capacity, upon which they would remove the block on the account. Such a letter was ultimately provided, and the account unblocked. HSBC offered R £35 towards the calls he was having to make, and £150 by way of apology for their error in actioning the EPA.

R was unhappy with HSBC's final response and so approached this service to see if we could assist in resolving the dispute. One of our investigators looked into the complaint, and having done so, concluded that HSBC had dealt with the complaint fairly, and that the amount of compensation HSBC offered to Mr C was enough to put things right. R didn't agree with our investigator's view and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

I have considered both sides' views in considering whether HSBC acted fairly and reasonably. I've looked at the issues raised and considered all the available evidence. I must make an independent decision about what I think is right for each case, and that's what I've done here.

The starting point to this complaint is the registration of the EPA with the OPG. In my view that should only be done when the donor has become incapable or is about to become incapable of managing their own affairs. R made such a registration, and so must have thought at that time that his father did not have such mental capacity. Indeed, R refers in his correspondence to the variability and instability of his father's mental health during 2016/17. Further, during a call to the bank on the 29 March 2019 R told them that his father was seriously ill and deteriorating rapidly. That said, from the evidence it is clear Mr C regained capacity at some time, and it certainly appears that he had so done at the point R took the EPA to HSBC. Quite why R did not de-register the EPA before so doing, is perhaps a moot point, since he told HSBC that his father had capacity.

HSBC accept that they were told Mr C had capacity, and so the correct way forward, in my view, would then have been for further enquiry on HSBC's part to determine Mr C's current mental state. I say that because HSBC were faced with two competing facts; that there was a registered EPA indicating lack of capacity, and a statement from the donee saying capacity had been regained. The accepted error is thus the commencement of HSBC's procedure for those customer's lacking capacity. I cannot fault HSBC's procedure in itself, only perhaps that they initiated it. The result of that requires some scrutiny.

A DD to DVLA was not paid, but a reminder was issued, and the road tax then paid. R argues that his father was thus driving without insurance for 7 days during which time he drove the car twice. I do not know whether the absence of road tax invalidated the insurance or not since I have seen no evidence of the same, but thankfully there was no adverse incident. By that I mean there has been no impact upon the insurance policy itself, and there have been no proceedings brought for driving without insurance or road tax. So, whilst the DD ought to have been paid, the net impact upon Mr C has been nil.

A second DD was not paid and this related to a broadband and telephone account. Fortunately, payment was made by R within 1 day of disconnection, and so he prevented any of the adverse consequences he has described. In short, the non-payment of this DD has also had no direct material impact upon Mr C.

Whilst the account was frozen Mr C initiated an account switch, which failed due to the freeze on the account. The block on the switch flows from the freeze itself, and is a direct consequence of it, albeit an action which was in accordance with HSBC's procedure. The issue is whether HSBC could have overlooked, or otherwise found a way to remove the freeze rather than adopt the stance which it did. I do not think they could, because having committed to it, I think it was then incumbent upon them to ensure that removing the freeze was evidentially sound.

R has complained about the duration of the freeze, being around 4 weeks in total. The account was frozen on the 28 March 2019 and he says HSBC told him the freeze would last 2 weeks. HSBC's notes show that R was told on the 11 April 2019 that a letter from his father's GP would be required to confirm capacity had been regained, and that letter was then provided on the 26 April and the account switch completed on or about the 30 April. In these circumstances HSBC cannot be faulted for the period of time it took for the GP's letter to be produced, and the only period of time of relevance is the period up to the 11 April or thereabouts. I appreciate R states that he was told by an HSBC manager that action was promised within a week of his call on the 30 March. The 11 April is a little bit outside that timescale, but not such that I could fairly criticise HSBC.

R has said that his initial complaint was not responded to within 8 weeks as it should have been, maintaining, variously, that it took 10.7 or over 11 weeks to respond. As far as I can see this is not part of R's original complaint to HSBC and as such they have not had the

opportunity to respond to it. As such I cannot deal with it until such time as HSBC have had that opportunity.

What HSBC do recognise and have accepted, is that it didn't get things right, and because of that it should compensate Mr C. As such, it offered compensation of £185. But, as R doesn't believe this is enough to put matters right, I've given some further thought to what might be an appropriate, fair and reasonable level of award. In so doing I've considered the level of awards this service has made for trouble and upset in similar cases, and also in the light of my findings, the impact of the accepted failure in service upon Mr C.

Problems and issues such as these very often lead a customer to experience frustration, annoyance and inconvenience, which we as a service term 'trouble and upset'. When we find this has occurred we think about what a business could do to put matters right, and awarding compensation is one way of doing that. But awards for the trouble and upset need to be balanced and measured against the ups and downs of daily life we all face when dealing with other people, businesses and organisations, and recognising that that can be inconvenient at times. I acknowledge of course that the failure to pay the DD's could have resulted in much graver consequences, but thankfully it didn't.

And I've considered R's request that HSBC ought to be punished, but that is not something I have the power to do. Any overall concerns about 'business process' would need to be raised with The Financial Conduct Authority (FCA).

Putting all of this into the balance I think what HSBC offered is fair and reasonable and I do think it is enough to put matters right. I have noted R seeks £1,000 but in my view that is disproportionate to the impact and effect HSBC's errors ultimately had.

So, although R will probably be disappointed with my decision, and whilst HSBC have indeed made errors, I can't say HSBC has subsequently acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

HSBC has already made an offer to pay Mr C £185 to settle this complaint, and I think that is fair and reasonable.

So, my final decision is that HSBC should pay Mr C £185.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 October 2020.

Jonathan Willis
Ombudsman