

The complaint

Mr L is unhappy that HSBC UK Bank Plc suspended his online account access when he could not answer its question about a payment instruction on his account.

What happened

The third-party on Mr L's account tried to make an online payment for £4,000 on 4 February 2022. It was flagged by HSBC's fraud team and blocked. HSBC contacted Mr L but he couldn't provide the information needed and asked the bank to contact the third party on the account. In the meantime the third party visited a branch to make the required payment but left without doing so as she didn't want to give information requested. Mr L's online banking access was restored the next day. Mr L wants an apology as he feels the bank's staff were incompetent; and compensation for his, and the third-party's, wasted time.

Our investigator did not uphold Mr L's complaint. She said HSBC applied the block as Mr L could not confirm enough information about the recipient. The payment was then reversed and account access suspended. But HSBC did this to protect Mr L's account, as it is entitled to. She said HSBC accepted it may have caused inconvenience and apologised for this, but it had not acted in error. The regulator requires it to protect its account holders from possible financial crime.

Unhappy with this assessment Mr L said HSBC made an error when it suspended his account. He knew the recipient and confirmed this to the bank. He told HSBC the transaction was authorised and that he did not want any fraud investigation to go ahead. There was no question regarding his identity at the time of the call. Our investigator re-iterated that the bank has to follow the processes and policies it has in place to prevent fraud, and there are often instances of fraud where an account holder initially believes the recipient to be known and genuine.

Mr L asked for an ombudsman's review. He said if a customer has been verified the bank must respect their wishes. HSBC ignored his instructions. And he thinks its actions breach the Mental Capacity Act 2005 and his rights under Article 8 of the Human Rights Act 1998. These laws must override any bank policies.

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.

Having done so I am not upholding Mr L's complaint. I will explain why.

In simple terms, the legal position is as follows. Where money is held on deposit, the relationship between a customer and their bank is primarily that of debtor and creditor. When dealing with a customer's order to make a money transfer the bank acts as the customer's agent in executing the instruction. An agent owes a principal a duty to exercise reasonable skill and care in carrying out the principal's instructions. So, a bank has a duty to its customer to take reasonable care when making such a payment.

With this in mind, a bank is under a duty to refrain from making a payment if it has reasonable grounds for believing, for example, that the instruction relates to fraud or any other criminal act. Given the bank's obligations to protect its customers from potential fraud or scams, it can be expected to make reasonable enquiries including – but not limited to – the circumstances surrounding the payment instruction.

Against those obligations however, the bank also has a contractual duty to execute a valid and proper order to fulfil its customer's instruction.

In this case the online payment request triggered fraud checks so HSBC wanted to find out more about the payment. And Mr L was unable to answer the specific question HSBC had about the beneficiary (their name). HSBC asked if the third party who had set up the payment could call, but Mr L rejected this solution saying she would be too busy. In these circumstances I find it was reasonable for it to suspend his account access until the issue was resolved. Mr L was irritated he then received a text from the fraud team but the bank later explained it did not have a telephone number on record for the third party. I can't see there were any issues with customer verification as on the inbound call HSBC acknowledges he has come through voice-verified.

Mr L says he told the bank the payment should go through and there should be no fraud investigation. But the bank has an obligation to process all its transaction in line with its fraud prevention policies and section six of the terms and conditions of the account sets out its rights and obligations in this respect. I don't find it did anything that breaches its agreement with Mr L. Mr L could not provide the information it requested so I find its actions were reasonable.

In terms of Mr L's point about HSBC's compliance with two different pieces of legislation, it is for the Courts to determine if a business has acted unlawfully. Our role is to decide what's fair and reasonable in all the circumstances of each particular case. In reaching that decision, we will consider various factors including relevant law and what we see as good industry practice from the time.

So although it's for the Courts to say whether or not HSBC has breached the Mental Capacity Act 2005 or Article 8 of the Human Rights Act 1998, I'm required to take them into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of this complaint.

I did so as part of my review of this case. But for the reasons I've set out above, from what I have seen I'm satisfied that HSBC's actions were fair and reasonable. It follows I am not instructing HSBC to take any further action.

My final decision

I am not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 October 2022.

Rebecca Connelley
Ombudsman