

The complaint

Miss C is unhappy HSBC UK Bank Plc stopped two cheques she wrote.

What happened

Miss C wrote cheques to her daughter on 7 January 2022 and 18 February 2022. HSBC did not process them as one of its fraud prevention systems detected the signatures did not match the signature samples it held for Miss C. In such circumstances its policy is that it has to speak to the customer to check the payment is valid. It accepted that on 7 January it failed to complete this process and so offered Miss C £50 to apologise. On 18 February it made the call but Miss C was unhappy to speak to the bank and so it could not proceed with payment.

Miss C says the bank is denying her access to her own money; she does not want it to make these kind of checks; it is not making reasonable adjustments as it must to accommodate her disability; and it is making discriminatory decisions because of her race.

Our investigator said HSBC had not acted unfairly when it stopped the cheques. It did so to protect Miss C's money as the signatures did not match and so it needed to speak to her. She said HSBC had now offered a further £50 compensation for not completing the follow up calls on the first cheque, and for the inconvenience this caused. She felt this was a fair resolution. She did not find evidence that HSBC had discriminated against Miss C. And noted it had offered to send a new signature card by post so Miss C could avoid a branch visit thus taking into account her disability. She also explained how a more recent and separate issue (Miss C failed security on a call) could be resolved.

Unhappy with this assessment Miss C asked for an ombudsman's review.

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 carefully considered all of the points Miss C has raised during the investigation. Where she has raised issues (such as the third cheque) that the investigator has resolved, and in keeping with our role as an informal dispute resolution service I will focus here, as our rules allow, on the points I find to be material to the outcome of Miss C's complaint.

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, in this case the cheques.

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

In this context, when the bank's automated system flagged discrepancies with the signatures on the cheques I understand why HSBC wanted to carry out further checks. Miss C has said she doesn't want these kinds of checks on her account, but they are there to protect her and to allow the bank to be sure payment instructions are valid, and made by Miss C herself. I understand Miss C's frustration as such checks can cause delays, but from what I have seen HSBC never suggested she was not entitled to the money which it holds in her name. I find, for her and its own protection, it was fair and reasonable that it first wanted to check she had signed the cheques.

With the first cheque the bank did fail to make a follow up call, but it has acknowledged this. Following our involvement it offered to increase the compensation for this error by a further £50 to a total of £100. I find this to be fair in the circumstances: the error was a one-off and the impact was short-lived.

Miss C's point that her signature will change given her condition is fair and reasonable. Given the circumstances, I would expect HSBC to consider making a reasonable adjustment here, this is a legal obligation – though in law HSBC is only required to make adjustments which are reasonable, and which don't fundamentally alter the nature of its service. If Miss C opts to use cheques the bank still needs to be able to check the authenticity of her signature to ensure she does not fall victim to fraud.

HSBC provided some options to Miss C. It offered to update the signature samples it holds and said this can be done by post, so she does not have to go to a branch. And it has not restricted the frequency at which she could update her signature samples. It also suggested she could make payments in different ways that are not reliant on a physical signature done remotely. I understand that having to go to a branch to make payments does not work for Miss C, but HSBC also said she could call and it can process payments over the phone for her. I feel the options HSBC has presented to Miss C are reasonable. I accept Miss C's preferred option would be that her signature on cheques does not go through any authentication checks, but I don't think it is unreasonable for HSBC not to offer that option, due to its security processes that are in place to protect its customers.

In terms of Miss C's point about discrimination, 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 Equality Act 2010, I'm required to take it 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. Miss C did not submit any specific evidence for me to consider in support of her claim of racial discrimination. For the reasons I've set out above, from what I have seen I'm satisfied that HSBC's actions were fair and reasonable.

I know this isn't the outcome Mrs C was hoping for, but I hope she can take some comfort from what I've said and the knowledge that an independent third-party has reviewed

HSBC's actions and found no conclusive failings, with the exception of the missed follow up call for the January cheque.

Putting things right

HSBC should pay Miss C the additional £50 compensation if has offered.

My final decision

I am upholding Miss C's complaint in part in relation to its failure to make a follow up call in January 2022. HSBC UK Bank Plc must put this right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 10 November 2022.

Rebecca Connelley
Ombudsman