

## The complaint

The estate of Mrs S complains that HSBC UK Bank Plc won't refund a number of payments made from its account.

## What happened

Between September 2016 and August 2017, a number of payments were made out of Mrs S's HSBC account, into an account in the name of her now ex-daughter-in-law's son. I've set out the payments that were made below:

Date	Amount
15 September 2016	£100
16 September 2016	£49,900
19 September 2016	£25,000
29 September 2016	£5,000
28 October 2016	£1,000
28 November 2016	£1,000
28 November 2016	£1,000
3 January 2017	£1,000
31 January 2017	£1,000
4 March 2017	£1,000
2 May 2017	£1,500
26 June 2017	£1,000
1 August 2017	£1,000

The estate of Mrs S, represented by her son, now says she didn't agree to make the payments. It says the payments were made by her now-ex-daughter-in-law, who was helping Mrs S with her finances at the time. And that Mrs S either didn't know the payments were being made or was misled into agreeing to them. Mrs S reported this to HSBC in 2018, and asked it to refund the money she had lost.

HSBC investigated but said the payments were made using Mrs S's online banking, and someone else would have needed Mrs S's personal details and her telephone banking password to make them. It also said it had called Mrs S to confirm the second payment, and she had confirmed it was genuine. So it thought the payments were all authenticated and it didn't agree to refund them. Mrs S wasn't satisfied with HSBC's response, so referred a complaint to our service.

I sent the estate of Mrs S and HSBC a provisional decision on 21 December 2023, setting out why I wasn't intending to uphold the complaint. An extract from my provisional decision is set out below:

*"Banks are expected to make payments in line with their customers' instructions. And, generally, a bank can hold a customer liable for transactions on their account if the evidence suggests it's more likely than not that the customer authorised them – for example, by making them themselves or telling someone else they could make them."*

*I appreciate that the estate of Mrs S says she either didn't know these payments were being made or was misled into agreeing to them. But it accepts that her now-ex-daughter-in-law was helping her with her finances. And the evidence I've seen suggests Mrs S was relying significantly on her now-ex-daughter-in-law to help her manage her finances and had given her access to her bank account to do so. So, even if it was Mrs S's now-ex-daughter-in-law who actually made the payments, by giving her access to her account, I think Mrs S had given her now-ex-daughter-in-law apparent authority to make payments on her account.*

*And so I think HSBC has acted reasonably in treating the payments as authorised. The starting position in law is then that HSBC was obliged to follow those instructions and make the payments, and the estate of Mrs S isn't automatically entitled to a refund.*

*However, the regulatory landscape, along with good industry practice, also sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think HSBC should fairly and reasonably:*

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

*And so I've also considered whether HSBC should have identified that Mrs S was potentially at risk of fraud as a result of any of these payments.*

*The first payment here, for £100 on 15 September 2016, wasn't for what I'd consider to be a particularly large amount. There were a number of payments made out of Mrs S's account for similar or larger amounts in the months before this payment. And it didn't leave the balance of the account at a particularly unusual level. So I think it's reasonable that HSBC didn't identify a risk of fraud as a result of this first payment.*

*But the second payment, for £49,900 on 16 September 2016, was for a significantly larger amount and for an amount significantly larger than any other payment made out of the account in the previous months. So I think HSBC should have identified a risk of fraud as a result of this payment and intervened to carry out additional checks before allowing it to go through.*

*HSBC did stop this payment and asked Mrs S to contact it before allowing it to go through. And I've listened to a recording of the subsequent call between them. In it, HSBC confirms the amount of the payment and who it is being sent to, and Mrs S then confirms the payment is genuine and that she wants it to be made. But while HSBC did confirm the payment was genuine, I don't think it went far enough to address the risk I think it should have identified.*

*It's not for our service to dictate the checks HSBC should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the size of this payment, I think it would be*

*reasonable to expect those checks to include questions about the purpose of the payment and then any relevant follow-up questions about the purpose it was given.*

*However, even if HSBC had asked further questions in this call and carried out the checks I'd expect it to have done, I think it's likely this payment and all the later payments the estate of Mrs S is now disputing would still have been made.*

*As part of the evidence we've been sent on this complaint, I've seen a copy of the judgment from a court case brought by Mrs S against her now-ex-daughter-in-law's son and parents. In this judgment, the court finds that Mrs S's son and her now-ex-daughter-in-law agreed between them that the payments to the ex-daughter-in-law's son would be made from Mrs S's account. The court also finds that Mrs S's son encouraged her to make the payments.*

*I appreciate that the estate of Mrs S disputes these findings the court made. But the judge in that case was able to hear in person testimony from those involved – which I am not able to. So I don't think I have sufficient evidence here, or that it would be appropriate for me, to go against these findings the court made.*

*As I mentioned above, Mrs S was relying on her now-ex-daughter-in-law to manage her finances. And in the call with HSBC, Mrs S also suggests she leaves her finances up to her son. So, even if HSBC had asked further questions and carried out further checks before allowing the payment to go through, I think it's likely Mrs S would have been able to satisfactorily answer those questions – because either her son or her now-ex-daughter-in-law had already told her to allow the payment.*

*Or, even if Mrs S hadn't been able to answer further questions satisfactorily at the time and HSBC had stopped the payment, I think it's likely that one of Mrs S's son or her now-ex-daughter-in-law would have made the payment again and then coached her through any questions HSBC had – so that the payment was made. And I think Mrs S would likely have done and said what they asked her to because, at the time, she was relying on them to help with her finances.*

*And as it's not unusual for customers to have family members helping with their finances, I don't think any questions I would have expected HSBC to ask could have uncovered any significant concerns.*

*So I don't think anything I would reasonably have expected HSBC to do would have stopped the payments being made from Mrs S's account. And so I don't think it would be fair to require HSBC to refund any of the payments."*

*I said I'd consider anything further the estate of Mrs S and HSBC sent in following the provisional decision, provided it was received by the deadline given.*

### **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.*

*HSBC said it didn't have anything further to add following the provisional decision. The estate of Mrs S responded to the provisional decision with a number of points, which I will address below.*

*I want to assure the estate of Mrs S that I have read and considered everything it sent us. I may not comment on every point it made, as I have focused my findings on the issues I think*

are most relevant to the outcome of this complaint, but I have considered everything it sent us in coming to this decision.

The estate of Mrs S argued that HSBC failed to protect her by failing to detect a change in her financial activity. But I explained in my provisional decision that I didn't think the checks HSBC did went far enough to address the risk I think it should have identified. So I have already agreed that I don't think HSBC did enough to protect Mrs S – but I also didn't think HSBC carrying out the checks we'd expect would have stopped the payments being made.

The estate of Mrs S also argued that, if Mrs S had been made to go to an HSBC branch and had the situation explained to her properly, she would have taken charge of her finances and the activity on her account would have stopped. But I don't agree. I appreciate that I can't know for sure what would have happened in this hypothetical situation, but where the evidence available is unclear or incomplete, I must make a decision on what I think is most likely to have happened based on the evidence I do have.

As I explained in the provisional decision, I don't think I have sufficient evidence here, or that it would be appropriate for me, to go against the findings the court made that Mrs S's son and her now-ex-daughter-in-law agreed between them that the payments to the ex-daughter-in-law's son would be made from Mrs S's account and that Mrs S's son encouraged her to make the payments. At the time, Mrs S was relying on her now-ex-daughter-in-law to manage her finances and I've not seen anything to suggest she was unhappy with or wanted to change this arrangement – even after being made aware of the £49,900 payment made out of her account. So I still think she would either have satisfactorily answered HSBC's questions or been coached through them so that the payment was made. And so further checks by HSBC wouldn't have made stopped the payments being made.

The estate of Mrs S has asked why HSBC never looked at details of where the payments were being made from or took more action after it says Mrs S's now-ex-daughter-in-law failed telephone security with HSBC several times. But I don't think the location the payments were made from or who gave the instruction for them makes a difference to this decision, as regardless of whether it was Mrs S herself, her son or her now-ex-daughter-in-law who actually processed the payments, my finding was that Mrs S would have ultimately agreed to them. And, as I explained above, I still think this is most likely to have happened.

The estate of Mrs S has also made a number of points about information or evidence that wasn't available to the judge in the court case brought by Mrs S against her now-ex-daughter-in-law's son and parents. But the Financial Ombudsman Service doesn't have the power to overturn a judgment made by a court. So I don't think it would be appropriate for me to comment on any difference this information may or may not have made.

I appreciate the impact this all had on Mrs S. The estate of Mrs S has detailed a number of medical conditions it feels were either caused or worsened by these circumstances, as well as the effect the situation had on her mental health and financial position. And my intention isn't to diminish these difficulties or the impact they had on Mrs S. But, as I don't think it was HSBC that caused these circumstances, or that anything we would reasonably have expected it to have done would have stopped them, I don't think it would be fair and reasonable to require HSBC to do anything further as a result.

The estate of Mrs S also mentioned a number of customer service failings it feels HSBC made, and that Mrs S should be compensated for these. But I don't agree there's sufficient evidence to show HSBC deliberately lied or withheld information from Mrs S. There may have been some errors or delays by HSBC in its correspondence, but this case involved a significant amount of correspondence over a number of years and I've not seen evidence any errors by HSBC caused substantial inconvenience here. And I can't award the estate of

Mrs S compensation for distress, only for inconvenience it suffered. So I don't think any errors HSBC did make during this case were sufficient to warrant an award of compensation here.

And so, as the additional points the estate of Mrs S made in response to the provisional decision don't change my conclusions, I still think the findings I set out in the provisional decision are correct.

I still don't think anything I would reasonably have expected HSBC to do would have stopped the payments being made from Mrs S's account. And so I don't think it would be fair to require HSBC to refund any of the payments.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs S to accept or reject my decision before 22 February 2024.

Alan Millward  
**Ombudsman**