

complaint

Mrs B, as attorney for Miss P, complains about the way HSBC UK Bank Plc has handled an Enduring Power of Attorney ("EPA").

background

Mrs B says she met with HSBC in September 2018 and asked to be added to Miss P's account under a Power of Attorney to assist with her banking if she had to go into hospital. She says she told HSBC that Miss P still had full mental capacity. Mrs B says she didn't know at that point that the registered EPA was incompatible with HSBC's form for someone with full mental capacity. HSBC accepted and processed the EPA and for a time Miss P's account was frozen and some payments weren't made. Mrs B wants HSBC to process all payments on Miss P's account, to cover any bank charges incurred while the account was inhibited and pay compensation for the court fees for cancelling the EPA registration.

HSBC said in its final response that the Enduring Power of Attorney had been processed and stamped by the Office of Public Guardian ("OPG") which considered Miss P was mentally incapable. If Mrs B would like to change the EPA she should contact the OPG. As HSBC received this legal document confirming Miss P was mentally incapable it's bound by a duty of care for its customer and has to abide by its procedures.

Our adjudicator felt this complaint shouldn't be upheld. She said:

- The EPA document has been stamped by the OPG which implies Miss P is mentally incapable. HSBC has explained that because of this it now considers Miss P is mentally incapable. That's reasonable.
- HSBC also says its legal department advised putting the EPA in place and it did so on 23 November 2018 in line with its duty of care to customers. And until the EPA is revoked it must stand as a legal document. That's fair and reasonable.
- The EPA was stamped by the OPG on 26 April 2018 before Mrs B registering it with HSBC. It's not fair to hold HSBC responsible if Miss P retains mental capacity when the document suggests she doesn't.
- HSBC hasn't made an error or acted unreasonably. And she can't ask it to do anything.

Mrs B doesn't agree and has asked for an ombudsman review. She says in September 2018 the EPA was reviewed by a member of HSBC's staff who commented that it was good it was registered. Mrs B then completed the bank's power of attorney application form. HSBC could've contacted either Mrs B or Miss P if there was a problem with the application. It took HSBC a month to put the EPA into place which is unfair and unacceptable. During this time account functions were restricted. It's suspicious that the EPA was only put into place after she contacted this service and this prompted HSBC to seek advice from its legal team. She has now applied to the OPG to cancel the EPA. The form for that only allows reference to the person who hasn't got capacity. She is waiting to hear from the Court.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss P signed an EPA form in 2005 naming Mrs B as her proposed and future attorney. And Mrs B also signed the form acknowledging that she understood that she had to apply to the Court for registration of the form under the Enduring Powers of Attorney Act 1985 whenever Miss P is becoming or has become mentally incapable.

It appears the EPA form was sent to the OPG in October 2017 and it stamped it as "registered" on 26 April 2018. This would've been done on the basis that the OPG was told Miss P was no longer mentally capable. From that date Mrs B became Miss P's attorney under the EPA.

There may well have been some confusion between the effect of the EPA and a general power of attorney when Mrs B spoke to HSBC in September. And it may well be that the effect of the registration of the EPA wasn't properly understood by the bank's staff or explained to Mrs B. As result Mrs B was given and completed a general power of attorney application form designed for a person who still had mental capacity.

But whatever happened I'm not convinced this made any real difference to what's happened as by the time Mrs B saw the bank the EPA was registered and she was already Miss P's appointed attorney.

HSBC wasn't responsible for the EPA registration application and it wasn't made as a result of the meeting in September 2018. The registration was actually completed months before that in April 2018. Consequently I don't think I can fairly or reasonably ask HSBC to reimburse the Court costs for applying to cancel the registration as Mrs B would like.

After the September meeting HSBC realised that the EPA was registered, which recognising Miss P wasn't mentally capable, and appointed Mrs B as her attorney. And that this was incompatible with the Power of Attorney application form completed by Mrs B which was designed for persons with mental capacity.

I think it was reasonable for HSBC to consider what to do at this point and to eventually take legal advice. Not least as it had conflicting information about whether or not Miss P was or wasn't mentally capable. I also think it was reasonable for it to inhibit the account for a relatively short time to protect Miss P until things became clearer. It also says it had to carry out checks. Overall I don't think HSBC unduly delayed dealing with matters.

The simple fact is that the registered EPA is a legal Court document which HSBC must respect and abide by. And having been made aware of it I don't think it's done anything wrong by considering Miss P to be mentally incapable and by recognising Mrs B as Miss P's attorney.

Mrs B says Miss P is mentally capable of handling her finances and an application has been made to the Court to cancel the EPA registration and her appointment as attorney. But until that application is dealt with by the Court Mrs B remains Miss P's attorney and HSBC is acting reasonably by not cancelling the EPA or removing it from its records.

Taking everything into account I don't think I can fairly or reasonably ask HSBC to do anything more. And although I recognise Mrs B's frustration I don't see any compelling reason to change the proposed outcome in this case.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B as attorney for Miss P to accept or reject my decision before 8 April 2019.

Stephen Cooper
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