

complaint

Mrs H complains that HSBC Bank Plc did not inform her about the clearing procedure for a foreign cheque she paid into her account.

background

Mrs H paid a foreign cheque into her account in an HSBC branch. She withdrew the money a few days later.

Mrs H received a letter around 5 days after the deposit informing her that the cheque had been sent to negotiation. The letter explains when the cheque will be credited and the associated terms and conditions of that negotiation.

By this stage Mrs H had sent most of the cleared funds on to a third party. She called the bank on receipt of the letter to express her concerns. Later on it became clear that the foreign cheque was counterfeit and Mrs H had been subject to a scam.

HSBC debited the cheque back out of Mrs H's bank account. It said it could not refund her the money but it would offer her an interest free loan to pay off the amount she now owed.

Our adjudicator recommended this complaint be upheld. In summary, he concluded that this was the first time Mrs H had paid in a foreign cheque and she was not provided with any information regarding the negotiation process until she had already withdrawn the money. He also highlighted that HSBC internal notes state that the cheque was negotiated in error and that the branch set incorrect expectations of the consumer.

HSBC denies it made an error. It outlined its branch procedure for handling foreign cheques and assured this service that this would have been followed. It says the adjudicator has taken the internal notes out of context. It also says the cheque was not negotiated in error. It added that Mrs H had not fully disclosed the relevant information about the cheque to HSBC.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence available.

HSBC has outlined that the branch procedure for accepting foreign cheques involves the staff member asking the customer what the cheque is for, and if it is the first time they have had a foreign cheque. The procedure also requires staff to highlight what happens if a foreign cheque is sent for negotiation, and the associated risks of the cleared funds being reclaimed.

I find Mrs H's version of events consistent and credible. She says that she was not informed about the process for clearing a foreign cheque in the branch and her subsequent actions are consistent with this. She called HSBC on the day that she received the letter advising her of the negotiation process - I can tell from this call that Mrs H appeared worried and

surprised by the contents of that letter. On balance, I am satisfied that Mrs H was not aware of this information until she received the letter.

HSBC has submitted limited information about what took place at the branch when Mrs H paid in the cheque. The submissions do not persuade me that the correct procedure was followed in this instance.

I also note that a 'Service Failure Memo' by HSBC as part of its own internal investigation indicates that the branch reviewed a flowchart for 'Negotiating or Collecting' a cheque which highlighted that Mrs H's cheque may have been incorrectly processed by the cheque processing centre. There is also a reference to the branch setting 'incorrect expectations' in the internal complaint notes. HSBC now denies that the item was incorrectly processed and say that the internal notes are not an admission of a branch error – however there is enough uncertainty here that when combined with the other factors, satisfy me that, on balance, the branch did not give Mrs H the correct information about how her cheque might be handled.

HSBC has claimed that Mrs H withheld information from it and did not disclose the true origin of the cheque in branch or on the telephone. It highlights the telephone call where Mrs H initially answered 'yes, from Spain' when asked if the cheque was a pension cheque. However, I am satisfied that Mrs H did not properly hear the initial question when she quickly answered the first time. Later on in the call Mrs H clearly clarifies that the cheque is not a pension cheque and that she had never received this sort of cheque before. On balance, I do not find that Mrs H has hidden information or misled HSBC.

I am aware that Mrs H appears to have been a victim of fraud, and I accept that HSBC are not directly responsible for this. However, on balance, and in these particular circumstances, I am not satisfied that HSBC properly followed its own procedure when accepting the foreign cheque from Mrs H. Therefore I find it should reimburse her for losses suffered as a result of its error.

I consider that Mrs H withdrew a total of £4,012 (representing part of the total value of the foreign cheque) and sent it to a third party before she was made aware of the information applicable to foreign cheque handling.

I am satisfied that had HSBC followed its procedures and correctly highlighted this to Mrs H in the branch she would not have withdrawn and sent the funds when she did. Therefore I find it fair and reasonable that she is reimbursed this amount by HSBC. I understand that HSBC has acted fairly by not applying any interest or fees as a result of this amount being re-debited from Mrs H's account, however, if this is not the case then these should also be refunded.

Also I find that Mrs H has suffered distress and inconvenience as a result of HSBC's error. In the circumstances I find an award of £250 to be fair.

my final decision

My final decision is that I uphold this complaint and direct HSBC Bank Plc to:

- credit Mrs H with £4,012 representing the amount she withdrew and paid to a third party before she was informed of the clearing process applicable to her foreign cheque deposit;
- refund any associated fees or interest charged, if applicable; and

- pay Mrs H £250 for her distress and inconvenience.

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