

The complaint

E, a company, complains that HSBC UK Bank Plc suspended access to its internet banking.

What happened

E had an account with HSBC. In October 2021, E tried to make a payment from the account. But HSBC contacted E to ask for further information about this payment, which E refused to provide. HSBC therefore reversed the payment, and suspended access to E's internet banking.

Dissatisfied, E complained to HSBC. E says the questions HSBC asked invaded its privacy, and that it has a duty to make the relevant payment. Because access to the account was suspended, it says it couldn't pay staff or bills to suppliers. It says there's been an ongoing impact on its business. E wanted HSBC to reinstate access to internet banking, a refund of bank charges during this period, and compensation for the impact this had on it.

HSBC said that it was acting in line with the terms and conditions that applied. It said that all payments to and from the account were subject to fraud checks and so it may need additional information before it proceeds with a payment.

E then referred the complaint to us.

Our investigator looked at this, but didn't think E's complaint should be upheld. E didn't agree. The complaint has been passed to me to decide.

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, like all financial businesses, is subject to legal and regulatory requirements. These are designed to protect its customers and others from financial crime, and mean that HSBC may need to request information about a payment before it can pay it from an account.

The terms and conditions that applied at the relevant time also allowed HSBC to ask for information. These state that:

“If we make a reasonable request for information, you must give it to us as soon as possible. If you don't, or we suspect fraudulent or criminal activity of any kind:

- we might try to get it from another source;
- we can lock or close your account(s) or suspend access to or terminate services; or
- you might not be able to carry on doing some or all of your banking with us.”

The terms and conditions go on to explain when HSBC might not be able to make a payment:

“We won’t be able to make a payment if:

[...]

- you haven’t provided any extra identification or information about the payment that we’ve reasonably asked for;”

Based on this, I’m satisfied that HSBC’s legal and regulatory obligations, and the terms and conditions, allowed it to make reasonable requests for information about payments out of the account – and to refuse the payment and suspend access to the account if it didn’t receive this.

E says that the regulator, the Financial Conduct Authority, says that banks can only refuse to make payments if it doesn’t have enough money in the account, if it had broken the terms and conditions, or if making the payment would be against the law. But given what I’ve said above, I’m satisfied that failing to provide information about a payment could break the terms and conditions of the account.

E has also referred me to a court judgment, *Philipp v Barclays Bank UK PLC* [2023] UKSC 25. In particular, E has cited the judgment of Lord Leggatt, at paragraph 100:

“Provided the instruction is clear and is given by the customer personally or by an agent acting with apparent authority, no inquiries are needed to clarify or verify what the bank must do. The bank’s duty is to execute the instruction and any refusal or failure to do so will prima facie be a breach of duty by the bank.”

In considering what is fair and reasonable, I am required to take into account relevant law, though I must add I am not bound to follow it. But I note that the judgment goes on to say that a bank can include exceptions to its duty to carry out the customer’s instructions in its terms and conditions. As I’ve said, the terms and conditions that applied to E’s account said that HSBC could refuse to make payments if E didn’t provide information about the payment HSBC had reasonably asked for. And HSBC had, in any case, other obligations that might mean it needed to block payments if it didn’t know the purpose or nature of them, or if it thought E’s director was using the funds for his own purposes rather than on behalf of E. It follows that HSBC was entitled in some cases to refuse to carry out E’s instructions.

With this in mind, the main question I need to consider is whether HSBC treated E fairly when it blocked E’s payment and restricted access to E’s internet banking.

I’ve considered what happened. In October 2021 E made a payment out of the account. HSBC contacted E to ask for further information about this payment. And later, after HSBC contacted E by text message, E’s director called HSBC.

I’ve listened to the calls. During both the calls, HSBC asked E about the purpose of the payment. E’s director refused to provide this information. He said it had nothing to do with HSBC – and that the reason he’d made the payment was because he wanted to make it. At the end of the second call, HSBC’s agent told E’s director that she wouldn’t be able to help without this information – and referred him to E’s customer relationship manager. I understand E contacted HSBC on further occasions but refused to provide the required information. After the second call, HSBC suspended E’s access to its internet banking.

I’ve thought about what E has said about that. E says that it shouldn’t be obligated to provide this information. It says that the sector it works in means that it is vulnerable to phishing attacks – and for that reason, it wouldn’t discuss the purpose of this payment with a third

party. The initial call from HSBC was unexpected and unsolicited. E's director didn't want to provide this information. E also takes the view that once the director had confirmed that the payment was genuine HSBC should have processed the payment.

I acknowledge E's director's strength of feeling on this point. I don't accept, however, that HSBC's request for information was unreasonable. Here, HSBC has confirmed that it was carrying out fraud checks to verify that the payment was genuine. While the initial call may have been unexpected, E had plenty of chances since then to provide the information – but didn't. And E having refused to provide this information, I can't say HSBC then acted unfairly by imposing restrictions on the use of the account. I'm satisfied that HSBC was acting in line with the terms and conditions when it refused to make the payment – and when it restricted E's internet banking.

E's director is also unhappy as he thought that at the end of the initial conversation with HSBC the advisor had said that the payment would be processed. I've listened to that call. The advisor in fact said that the payment would be subject to further checks.

I acknowledge that the account restriction remained in place for some 14 months. But I'm satisfied E was aware of what HSBC needed in order to remove the restriction, and I'm not going to award compensation given this all stems from E's failure to provide this – this is something E chose to do. I note that the account otherwise remained open and E was able to use it in branch.

With all this in mind, I don't uphold the complaint and I'm not going to tell HSBC to do anything further to put things right.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 9 February 2024.

Rebecca Hardman
Ombudsman