DRN-4441147

The complaint

Mrs S complains that HSBC UK Bank Plc purchased some shares for a higher price than she wanted to pay.

What happened

On 14 April 2023, Mrs S placed an order to purchase 5,000 shares. She says that when she placed the order the indicated share price was between 10 and 15p. However, HSBC completed the order for a price of 24p per share.

Mrs S complained to HSBC as she felt it shouldn't have proceeded with the order if the price was more than 15p per share. She said the shares have since fallen in price and so HSBC should compensate her for this.

HSBC considered Mrs S' complaint but didn't uphold it. In summary, it said:

- Mrs S placed the order at the best price and so it fulfilled the order using the best price it could obtain from the market.
- The order went out to four market makers, two of which quoted a purchase price of 40p, but ultimately, it was able to achieve a best price of 24p per share.
- If Mrs S had a specific price she didn't want to be exceeded, she ought to have added a limit price to the order.
- The use of limit prices has been previously explained to Mrs S.

Mrs S remained unhappy and so she referred her complaint to this service for an independent review.

One of our investigators considered Mrs S' complaint but explained that they didn't think HSBC had acted unfairly. In summary, they said:

- HSBC had confirmed the price indication of 15p per share Mrs S saw was only for orders that didn't exceed 1,000 shares.
- Mrs S had placed the order at the best price without adding a limit price to the order and so HSBC hadn't acted unfairly by purchasing the shares at the best price it could achieve.

Mrs S didn't accept the investigator's findings. In summary, she said:

- The shares have since become delisted and so she's lost all of her investment.
- She accepts she didn't add a limit price on the order, but she doesn't think this gave HSBC the right to purchase the shares at a higher price than indicated to her.
- HSBC does not allow investors to check live prices if they do not have enough funds available to complete the order. However, she was able to purchase shares that put her balance in debit. She thinks HSBC shouldn't have completed the order is she didn't have enough funds in her account.

As Mrs S remained unhappy, 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's sharedealing and investment terms and conditions set out HSBC's relationship with Mrs S. Most relevant to Mrs S' complaint in Section 4 of these which set out the standard of care HSBC would take when acting on her instructions:

> *"As set out above, the Investment dealing part of the Service is an execution-only service. This means:*
>
> *we'll not provide you with discretionary or advisory management services;*
>
> *• we'll not make any Investment dealing decisions on your behalf;*
>
> *• you're solely responsible for the Investment dealing Instructions you give to us;*
>
> *• we're not required to assess the suitability or appropriateness of the Service or any Investments for you; and*
>
> *• the protection provided by the FCA on assessing suitability does not apply to the Service or any Investments.*
>
> *The only duty we owe you when acting on your Investment dealing Instructions Is to take all sufficient steps to achieve the Best Possible Result."*

Best Possible Result is defined as being:

> *"…when executing orders on a consistent basis, including in situations of market stress, we'll take into account a range of factors which include: price; cost; speed; likelihood of execution and settlement; size; nature; or any other consideration relevant to the execution of Client Orders. Price and execution costs will be paramount although other factors such as the type of order, the type of Financial Instrument and the choice of Execution Venue will also be considered where necessary;"*

So considering the above, it's clear HSBC was providing Mrs S with an execution-only service and so it wouldn't be expected to make any investment decisions on her behalf. As such, she was solely responsible for ensuring the accuracy of the instructions it gave to HSBC.

I understand Mrs S feels she was given incorrect information regarding the share price she was presented with when making the instruction. Looking at the terms and conditions, HSBC clearly explains that the price quoted isn't guaranteed:

> *"When I place a deal is the price quoted guaranteed?*
>
> *No. When you enter a buy or sell order In a UK Investment during Trading Hours through Online Banking, we'll usually show you a 'fixed price quote' on the preview order screen which we will use our best endeavours to fulfil. The fixed price quote Is calculated by taking the best price offered by a number of market makers at the time we request a quote. A countdown screen will appear and give you 15 seconds to confirm the order. The price quoted to you will hold good for 15 seconds unless for example, there has been market volatility In the 15 second countdown and the price*

offered by a third party market maker is withdrawn.

The market may fluctuate during the 15 seconds you have to accept the fixed price quote provided. This means that if your order is executed in the market at the fixed price quoted, it may be better or worse than the best bid or offer price at the time of execution."

HSBC has explained that the price indicated to Mrs S wasn't achievable due to her order of 5,000 shares being over the market limit of 1,000 shares for the 10 to 15p price quoted. And so the best price it could achieve for this volume of shares was 24p per share. HSBC had a duty under the terms and conditions to achieve the best possible result and I'm satisfied it did this in getting the best available price for the volume of shares Mrs S had instructed it to purchase.

I appreciate Mrs S think the best possible result would have been not to purchase the shares if the price exceeded the quoted 10 to 15p per share, however, I don't agree. I say this as Mrs S didn't put a limit order on her instruction. The terms and conditions clearly explained that Mrs S could add these to an order, and I understand HSBC had explained how limit orders work with Mrs S, prior to her making this instruction. As I've explained above, it was Mrs S' responsibility to ensure that her instruction was accurate and so I don't think HSBC has acted unfairly in purchasing the shares at the price it did when she hadn't set a limit to the price she was willing to purchase these for.

I've also considered Mrs S' comment that HSBC ought not to have allowed her to purchase the shares when she didn't have enough funds in her account. And having done so, I'm not persuaded this would make any difference to my findings. I say this as even if Mrs S didn't have sufficient funds available in her cash account, HSBC is able under to the terms and conditions to proceed with the transaction. The terms and conditions explain:

"What are my settlement obligations when I ask you to buy an Investment?

If you've asked us to buy an Investment you must make sure you're able to pay for the Investment (including any associated transaction costs) on the settlement date. This will be the date that is set out on the contract note you receive for the order.

You'll be able to pay for your order if, on the settlement date, you have either enough:

- *available funds in your Cash Account; or*
- *available credit limit on your Trading Reserve.*

[…]

Alternatively, we may exercise our discretion to treat your buy order as a request for an unarranged Trading Reserve or to informally extend your Trading Reserve limit"

So taking into account all of the above, I'm satisfied HSBC has acted fairly in completing Mrs S' instruction at the price of 24p per share.

My final decision

My final decision is that I do not uphold Mrs S' complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 10 January 2024.

Ben Waites
Ombudsman