

## **The complaint**

Mrs R complains that National Westminster Bank Plc trading as Ulster Bank (“Ulster”) allowed a cheque payment of £190,000 to be made from her account to another member of her family.

Mrs R is represented in this complaint by her daughter (“the representative”).

## **What happened**

The details of this complaint are well known to both parties so I won’t repeat everything again here. In brief summary, Mrs R wrote a cheque for £190,000 to another family member (“W”) which debited her account on 16 December 2021. Her representative complained to Ulster as she didn’t think the bank should’ve allowed the money to be paid as the cheque was written under duress, Mrs R lacked capacity to make the payment, and the recipient was not entitled to the funds.

W subsequently returned around £170,000 to Mrs R on 12 December 2022 as a result of a settlement agreement, but her representative feels that Ulster should refund the remaining £20,000 as it shouldn’t have allowed the payment in the first place. The representative says that Mrs R was mentally ill at the time and had been groomed by W, who had forced her to write the cheque. Mrs R had also spoken to Ulster prior to the payment being made. Her representative says that it would’ve been apparent that she was distressed, drunk and vulnerable, so it should’ve known that something wasn’t right and ought to have blocked the payment and the account.

Ulster said it wouldn’t refund any of the money Mrs R had paid as it said there was no reason for it not to follow her payment instruction, given she’d signed and authorised the cheque. It also didn’t consider the claim to be one of fraud, but rather a civil dispute between Mrs R and her family member, against whom legal action is currently being taken.

Our investigator didn’t uphold the complaint. He didn’t think Ulster had acted unreasonably by releasing the funds in line with Mrs R’s payment instruction, which Mrs R had authorised both by signing the cheque as well as over the phone when she spoke to Ulster. He also didn’t think Ulster ought to have been aware of any particular vulnerabilities at the time. Mrs R’s representative disagreed, so the matter has been escalated to me to determine.

## **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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it. I’ll explain why.

It isn’t in dispute that Mrs R signed and authorised the cheque payment of £190,000. However, Mrs R’s representative submits that Mrs R was vulnerable at the time, as she was suffering from mental health issues as well as alcohol dependency. So, she submits that

Ulster shouldn't have honoured the cheque Mrs R had issued.

I'm sorry to hear about the health issues Mrs R has been suffering from, and I appreciate this would have been a very difficult time for her. I'm pleased to hear she is now recovering. However, Ulster said it had not ever been made aware of any health issues or vulnerabilities, and neither have I seen any evidence of the bank being made aware prior to the cheque being issued. There was no power of attorney arrangement in place, for example, demonstrating that Mrs R lacked the capacity to make her own financial decisions.

It also doesn't seem that any vulnerabilities would have been readily apparent based on the conversation the bank had with Mrs R about the cheque. I've listened to a recording of the call Mrs R had with Ulster on 14 December 2021 prior to payment being made. She said that she was going to be issuing a cheque for £190,000, which was a gift of inheritance for her granddaughter to buy a house, and that she wanted to confirm she had written the cheque and authorised the payment. Ulster said it will leave a note on the account, but said it may call Mrs R on the day the cheque was paid in.

Based on the conversation Mrs R had with Ulster, I don't think there was anything that ought to have alerted the bank to any potential vulnerabilities or abuse. It does not seem that she lacked capacity to make the payment either. She was able to provide her account details upon request and also queried recent transactions that had debited her account, which she later confirmed she remembered after the agent told her where the transaction took place. She also asked it to cancel a standing order. There was nothing objectively concerning that ought to have alerted Ulster to any wider issues.

Mrs R's representative has said that she was slurring and showed signs of distress. But based on the call, I can't identify any parts of the conversation that appear to demonstrate Mrs R being in a state of distress. She doesn't appear to be under the influence of alcohol either and was coherent when speaking to Ulster. Even if she was slurring her speech, there are several reasons that could be behind this, and I don't consider it's enough in itself to indicate that someone might be lacking the mental capacity to carry out their own financial affairs. So, I'm not persuaded Ulster acted unreasonably by carrying out Mrs R's payment instruction that she'd authorised by cheque.

I appreciate Mrs R's representative is also unhappy because Ulster told Mrs R it would call her back to authorise the payment. However, it seems the agent only said the bank *might* call her, it didn't say for definite that it would. And given Mrs R had already given prior notice of her authority and consent for the cheque to be paid, which was noted on the account, I don't think Ulster acted unreasonably by failing to call Mrs R prior to releasing the funds. Even if it did call her, judging by the conversation she'd already had with Ulster, it seems unlikely she would've said anything different that would've ultimately stopped the payment.

I understand this will likely come as a disappointment to Mrs R and her representative, and I appreciate their strength of feeling about this matter. However, a large part of the issues raised seem to be ultimately connected to the conduct of their other family member in taking receipt of Mrs R's money and the circumstances in which this occurred, rather than any wrongful act that Ulster can fairly or reasonably be held responsible for. Mrs R knew who she was paying and has fortunately managed to recover £170,000 from W through a settlement agreement. So, it seems that any outstanding funds would also need to be recovered by pursuing W through the appropriate legal channels, and I would not expect Ulster to become involved in a civil dispute such as this.

Overall, while I appreciate this has no doubt been a distressing experience for Mrs R, I'm not persuaded Ulster has done anything wrong here by honoring the payment in these circumstances, so I won't be asking it to take any further action.

**My final decision**

For the reasons given above, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 5 February 2024.

Jack Ferris  
**Ombudsman**