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Key points

Disabled people in Scotland are being denied access to their own money because of obstructive banking policies.

The service provided to disabled customers by banks is inconsistent and unacceptable.

Some of Scotland's most well known banks could be breaching the Equality Act 2010.

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Short-changed: Disabled Scots let down by the banks

There are over 42,000 people living in residential care homes across Scotland. This includes people with physical impairments, learning disabilities, mental ill health and older people. ¹ A number of disabled people who live in residential care homes have told us that they are being denied access to their own money by banks and building societies.

It seems that banks are restricting the amount people can withdraw from their accounts for reasons of 'customer protection'. Other difficulties have also been reported to us including not being able to open a bank account, banks refusing to change signatories on a third party mandate account and restricting the number of care staff who can act as signatories.

We want to know why some banks are denying disabled people living in residential care homes access to their own money by applying discriminatory policies and procedures.

What is the issue?

- **Some banks are not allowing disabled people who live in a residential care home to open a bank account because they do not have a passport, driving license or utility bill**
- **Some banks are not offering any reasonable alternatives if someone is unable to sign their name**
- **Some banks are restricting the amount of cash disabled people can withdraw from their account because they live in a residential care home**

Many disabled people in our residential care homes and the staff who support them tell us that even when arrangements are in place and are working well, they can break down when there are staffing changes at the bank or they have to change branches. This often causes inconvenience and distress to the customer.

How did we research this issue?

We contacted six Scottish based banks: Bank of Scotland, Royal Bank of Scotland, Santander, Clydesdale, Lloyds TSB and Dunfermline Building Society and asked the following questions:

- If someone wants to open a bank account, what is acceptable as identification?
- If someone is unable to sign, has difficulty in signing, or their signature is inconsistent, what alternatives are there?
- We asked for a copy of their third party mandate policy or procedure
- We asked whether there were any extra measures put in place if someone lives in residential care and has a third party mandate and whether there was a separate policy or procedure regarding this.
- If so, what is the reason for these measures?

Dora's story

Dora did not want an account with a PIN number as she would find it difficult to remember the number.

The only account the bank offered her was an account that does not have a cheque book or debit card.

This means that she sometimes has to get a banker's draft which costs her £15 each time.



Key Findings

Getting information from banks

Obtaining the information from banks required to compile this report was a complicated and often frustrating process.

It was difficult to identify contact details for general enquiries from the public as opposed to customer enquiries and in the case of three of the six banks even when we were able to ask our questions, we were told that branch managers would make these decisions in individual cases.

Some staff were very helpful and did understand that it was not a straightforward issue; however a staff member at one bank was extremely rude and refused to give us any information.

We did however get some information from another department. Some call centre staff also seemed frustrated as they did not have the answers and did not know where to get them.

We have not received any information from the Dunfermline Building Society despite repeated efforts to contact the bank.

Opening a bank account

All were able to give a comprehensive list of identification that is acceptable when opening a bank account.

In each case the list went beyond the passport, driving licence or utility bill that one of our case studies, Kenny, was presented with.

Kenny's story



Kenny told us when he lived with his mum and step dad, his step dad acted as a third party mandate signatory for his bank account and there were no restrictions on the amount of money he could withdraw from his account. However when he moved into a residential care home, the bank insisted that his step dad remain signatory rather than allowing staff to do this and the amount he could withdraw in a day was restricted to £100, a limit which is not applied to other customers.

This causes Kenny and his step dad a lot of inconvenience not least because they do not live in the same town and the bank has given no reason for this other than they are following head office policy.

Signatures

In relation to alternatives to a signature, the Royal Bank of Scotland suggested that a shortened form of signature or a consistent mark could be acceptable. The Bank of Scotland told us that customers could apply for a "DDA authorisation letter" which would give details of the difficulties the disabled person has in signing and waive the need for a signature.

This can be accompanied with a signature card authorised by the bank and the letter also has a phone number which can be called for confirmation. However the staff member was not clear if this was used in the

bank or only if customers were buying goods. In addition the Disability Discrimination Act (DDA) was replaced in 2010 by the Equality Act. Santander told us that alternatives to a signature would be at the discretion of the branch manager, however when they checked with the manager of a branch they were told there was no acceptable alternative. Lloyds TSB said they would accept a facsimile signature stamp or a mark witnessed by two bank staff.

Third Party Mandates

Regarding information about third party mandate, branch staff from the Royal Bank of Scotland said information and forms for third party mandate were available in branches and confirmed that no restrictions were placed on customers who lived in residential care homes.

Santander told us they did not operate accounts managed by third party mandate.

Lloyds TSB told us that branches currently use paper forms, but this will soon be replaced by an electronic form.

If a customer is unable to sign their name but is able to make and understand decisions, then they can set up a third party mandate by having it notarially executed by a solicitor. In addition Lloyds TSB does not place any restrictions on the accounts of people who live in residential care homes.

Third Party Mandate

A Third party Mandate is a formal instruction to a bank by an account owner to provide access to their account by another person. The terms of the third party mandate state what authority the third party has.

A customer can cancel a third party arrangement at any time. A facsimile signature stamp is more commonly known as a rubber stamp. It is an exact copy of the way someone signs their name and is put on a rubber stamp so it can be used for example on cheques.

The Legal View

“As service providers, banks are subject to the various duties not to discriminate under section 29 of the Equality Act 2010.

Banks have a duty under section 20 of the Equality Act 2010 to make reasonable adjustments to avoid any substantial disadvantages suffered by disabled persons as a result of the operation of any policies or practices.

To show discrimination a disabled person would need to show that the disadvantages suffered by them were ‘substantial’ and if so, what ‘reasonable’ adjustments could be made to eradicate or alleviate the difficulties caused.

Under section 15 of the Equality Act 2010 banks will be liable in discrimination if they have subjected a disabled person to unfavourable treatment because of the effects of their disability.

This is the case unless they can show their practices were a proportionate means of achieving a legitimate aim which they had. Therefore, the banks would be obliged to identify the objective which their existing practices were designed to meet.

They would then have to show that that objective was legitimate. Once they’d done that, their need to achieve that legitimate aim would be balanced against the harm caused to disabled persons as a result of the adoption of those banking practices.

Therefore, the more pressing the need for the bank to adopt the practices, the less likely that the disabled person will be able to prove that their adoption is disproportionate. Conversely, the greater the harm caused to disabled persons by the adoption of the practices, the more likely that they will be disproportionate.”

David Cabrelli, Senior Lecturer in Law, University of Edinburgh

SMILE

In 2002 Smile Internet Bank was accused of disability discrimination when they refused to allow people appointed as an Enduring Power of Attorney to set up online bank accounts.

Banks argued that these accounts were more open to breaches of security as they had no means of checking the relevant documents.

However Smile worked with the Disability Rights Commission, now part of the Equality and Human Rights Commission, and agreed to change their policy and set up a specialist unit to handle this.

Conclusion

There is a great deal of confusion surrounding the issues explored in this report, on the part of both customers and bank staff. There appears to be a lack of understanding about the services and alternatives available and what is acceptable, and why.

Accepted practice seems to vary not only between banks, but between branches and even bank staff. At branch level bank managers need to consider individual customer needs as well as what is reasonable for the bank. However we were concerned that when we contacted banks and call centres, some banks did not even know there were other options, which could be a breach of the Equality Act 2010.

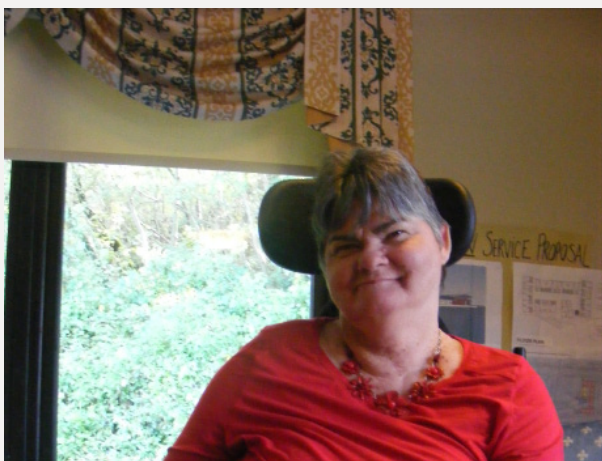
In addition some banks have changed the terms and conditions of an account without giving customers a clear explanation as to why these decisions were made. Kay was told that the amount of money she could withdraw was being restricted to £100 per week for reasons of customer protection. This suggests the bank is worried about financial abuse of specific customers and is putting procedures in place to mitigate the risk.

However these procedures disadvantage and discriminate disabled people in residential care homes.

Banks should ensure that they have procedures in place for their staff if they become concerned about this in relation to an individual customer, but not employ blanket rules.

Examples of good practice do exist. We were told about a bank which allows a fingerprint system as an alternative to a signature and another which uses face recognition.

Kay's story



Kay has lived in the same residential care home for many years and the third party withdrawal arrangement she used to manage her bank account worked well until a few months ago when the bank restricted the number of staff who could act as signatories and refused to allow Kay to withdraw more than £100 a week, again a limit not placed on other customers. Kay made a formal complaint to the bank and has now taken her complaint to the financial ombudsman. The bank said these measures which they called a 'residential care withdrawal process' have been put in place for customer protection. Kay requested a copy of the process but the bank has failed to provide it. The bank suggested that Kay use various alternative options, including a Court of Protection arrangement, however this provision does not apply in Scotland.

John's story

John visited his bank with a member of staff who was a signatory for his account to withdraw money and they had to be seen by four members of bank staff before someone understood the third party withdrawal process.

This is a frustrating and time-consuming situation which John says happens frequently.

A report produced by ARCUK gave an example of bank guidelines which said "if a customer is unable to provide a signature at the account opening stage and providing they understand how to operate the account, verbal agreement of the terms and conditions of the account can be obtained. The account application can be signed by two members of staff on behalf of the customer".²

One bank has a system where they would alert the local social work team if they were concerned about a customer who accessed his account using face recognition. Although Lloyds TSB said they would accept a facsimile stamp as an alternative to a signature, the British Bankers' Association were not able to confirm whether this is recognised in Scots law.³

It appears that banks may have, in the past, set up local arrangements to allow disabled customers to open and manage their accounts but this can result in frustrations for customers when these are questioned by other bank staff. Although Lloyds TSB and the Royal Bank of Scotland understood the issues we raised when questioning them, the experience of disabled people suggests this is not reflected at ground level.

Rather than banks considering their own legal responsibilities towards disabled people in the Equality Act 2010, including those in residential care homes, they seem to hide behind the legal provisions in the Adults with Incapacity (Scotland) Act 2000 which are available for people who are unable to manage their finances because of being incapable of making, communicating or understanding decisions.

Terrence's story



Terrence wanted to open a bank account, but the bank insisted that he provide identification in the form of a passport, a driving license or utility bill.

Terrence does not have any of these documents and after three years of trying Terrence's uncle had to 'introduce' him to the bank and act as a guarantor regarding his identity.

These provisions include Financial Guardianship and Managing Residents' Finances. Although useful these measures are not always necessary or appropriate. They should only be used where they are the only realistic option and where they are of benefit to the person who lacks capacity.

⁴ The Adults with Incapacity Act also allows people to appoint a Power of Attorney to manage their affairs. Again this will be appropriate for some people, but it is not suitable in all cases.

Before resorting to these measures banks should consider making reasonable adjustments such as alternatives to customer signatures or advising customers how to set up a formal third party mandate. By taking these steps banks will make it possible for many disabled individuals to manage their own affairs.

It would seem that the negative experiences of disabled people living in residential care homes stems from banks being concerned about customer protection and security without ensuring these policies and procedures are not discriminatory. Although banks have a responsibility to ensure customers' interests are protected, we do not believe restricting the amount of money they can withdraw in a week and refusing to consider care staff as signatories is an acceptable way of achieving this. Banks should not make assumptions about the circumstances of disabled people living in residential care homes. Blanket rules are rarely acceptable under the Equality Act 2010 and can in fact amount to indirect discrimination against disabled people. Instead banks should consider people's individual circumstances and make adjustments as and when required and in communication with the customer.

References

- ¹Care Home Census 2010 (ISD Scotland)
- ²Banking Matters to Me by Jane Livingston (2007)
- ³Signing your name: how to overcome difficulties (British Bankers' Association)
- ⁴<http://www.legislation.gov.uk/asp/2000/4/section/1>

Further information

This report was compiled by Capability Scotland's Research, Advice and Policy team. For further information about the report and reference details, please call 0131 347 1052.