

## **The complaint**

Mrs B complains that HSBC UK Bank Plc did not deduct an overpayment from the outstanding balance of her credit card when they paid this into her joint bank account.

Mrs B is represented by her husband in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mrs B herself.

## **What happened**

Mrs B made two payments to her credit card. This resulted in the credit card balance being in credit by over £5,000. Mrs B contacted HSBC via a webchat on 3 December 2020, to move the overpayment into her joint account. HSBC moved £5,114.37 to her joint bank account.

Mrs B says that she uses a third party online trading platform and when she withdraws from that account, the proceeds are paid to her HSBC credit card account. On 9 December 2020, Mrs B noticed her HSBC account was still in credit and she had recently had money paid into the credit card account from the trading platform, so she contacted HSBC via the webchat again to move the overpayment into her joint bank account. This time HSBC moved £7,067.13 into her joint bank account.

Mrs B said that when she received her May 2021 statement, she noticed that HSBC had debited £5,114.37 from her credit card account on 27 April 2021. Mrs B made a complaint to HSBC as she said that she had to contact HSBC 15 times to try and find out why this had been debited from her account and she also visited a local branch.

HSBC admitted that they had made an error in December 2020, when the first payment was paid into her joint account. They said although the money had been transferred to the current account, it hadn't been deducted from the credit card balance itself. So Mrs B still owed them this money. Mrs B informed HSBC that she couldn't afford to pay the money back as she recently had a child and she had purchased a home, so she had spent the overpayment on items, as she thought this was from her trading profit.

HSBC offered to apply a 29 month interest free period to the credit card account which would give Mrs B more time to spread the costs of the payments. HSBC also said they had refunded a late payment fee of £12 for Mrs B and they offered her £150 compensation for distress and inconvenience, which Mrs B declined.

Mrs B brought her complaint to our service. She said that HSBC should wipe off the balance owed since it was their error. Our investigator said that whilst she was sympathetic to Mrs B's situation, Mrs B has had the benefit of the funds and this money is owed to HSBC. She said ultimately it was Mrs B's responsibility to recognise that the funds were not due to her and that a mistake had been made.

Our investigator thought the £150 that HSBC had offered, the £12 refund and the 29 months 0% on the full outstanding balance was fair for the distress and inconvenience HSBC had caused her.

Mrs B wanted an Ombudsman to review her complaint. She said she wanted the Ombudsman to punish the business and that her and her husband's financial circumstances have changed since the error has happened. She wants the balance to be wiped off.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."*

*Mrs B has made a number of points to this service and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of her complaint in deciding what's fair and reasonable here.*

*At the outset I'd like to emphasise that this service is not the regulator. Nor do we act as the enforcer for the regulator. The regulator is the Financial Conduct Authority. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant industry guidance for example, make findings about whether a financial business has failed its customer in any way. Where we find it has, we make awards designed to make the business put things right with the complainant customer. Our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator.*

*I'm also unable to ask HSBC to wipe off the outstanding balance. This is because Mrs B has had the benefit of this money and has spent it. So although HSBC made an error by not debiting the £5,114.37 from her outstanding credit card balance when they should have done, the reality is that this was never Mrs B's money to spend once the duplicate payment had been made to her bank account, regardless of if her personal situation has since changed.*

*As HSBC have admitted that they made an error, I've considered whether the compensation that HSBC has offered Mrs B is fair. But I'm not persuaded that it is. I say this because I'm not persuaded that the £150 offered fairly reflects the impact that the error would have had on Mrs B.*

*Mrs B only found out that something went wrong when she received her May 2021 statement and it showed the £5,114.37 being debited from the credit card balance. I'm persuaded that this would have caused alarm and she may have been worried that there had been fraudulent activity on the account when she saw such a large balance being debited.*

*So what I would have expected HSBC to do, once they realised they had made an error, is to attempt to get in touch with Mrs B to explain what had happened. While this still would have been frustrating for Mrs B, at least she will have been aware of what was going to happen, instead of her having to contact HSBC multiple times to find out what had happened.*

*I'm persuaded that it would be fair for HSBC to increase the compensation offered to Mrs B to £250. I'm satisfied that this reflects the additional distress she would have suffered as a result of HSBC not being proactive on this issue in addition to the error only being discovered months after it had happened.*

*I've then thought about the other redress which has been offered. I don't think it's fair that*

*Mrs B should pay interest on the £5,114.37. I say this as while it's only fair she pays this money back, based on her having had the benefit of the money, it was still HSBC's error. So they shouldn't be able to potentially profit from this by charging interest. I was glad to see that HSBC had offered to let Mrs B have 29 months interest free on the account, to give her time to pay this back, and even though she didn't accept HSBC's offer, HSBC still applied no interest to be charged on the account from her July 2021 statement for the time being.*

*But I think a fairer way to address this for both parties, is for HSBC to rework Mrs B's account so that the debit of £5,114.37 is ringfenced and she won't be charged interest on that amount until it is repaid in full.*

*I'm persuaded this is fair for a couple of reasons. If Mrs B chooses to use more credit on her credit card, then HSBC would be entitled to charge interest on the separate credit that she uses. Also, as the £5,114.37 balance reduces, as Mrs B makes her monthly payment, Mrs B's minimum payment would reduce also (if she didn't use any of the other credit available to her). So there's every possibility that she may not be in a position to pay off the full £5,114.37 within the 29 months which HSBC have offered (especially considering her change in personal circumstances), therefore it would be fair to ringfence the debited amount to ensure she will not pay interest on the £5,114.37 until it is paid in full.*

*If the outstanding credit card balance is less than the £5,114.37 at the time HSBC ringfence the balance, then the full amount should be ringfenced at 0% interest until that balance is paid off in full.*

*I've also noticed that Mrs B's June 2021 statement shows that she was charged £123.14 in interest. This was before HSBC placed an indicator on her account which prevented interest from being charged. For the reasons I've mentioned previously, I'm not persuaded that it would be fair for Mrs B to pay interest on the debited amount of £5,114.37, so I intend to ask HSBC to refund the £123.14 interest charged, to help reduce the outstanding balance."*

I invited both parties to let me have any further submissions before I reached a final decision. HSBC responded and they said that while they did not agree with everything in my provisional decision, they will accept my opinion and they will settle in line with my recommendations as a goodwill gesture and without admission of liability.

Mrs B did not accept the provisional decision. She said the compensation was too low for all of the pain, stress and sleepless nights she'd been through. She asked to come to a final conclusion of waving half of the outstanding debt off, with the rest to be paid over 29 months at 0% interest.

### **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.

I've considered what Mrs B has said regarding the proposed resolution of the complaint. But I can't agree to this. I say this as Mrs B has had the benefit of the money and she has spent it. So it's only fair that she pays the overpayment back.

I've then considered what Mrs B has said about the compensation being too low. But I have factored into the award the distress and inconvenience suffered as a result of HSBC's error here. Compensation is a discretionary remedy that we sometimes award if we feel that a business has acted wrongfully and therefore caused distress and inconvenience to their customer over and above that which naturally flows from the event. When we recommend compensation, it is often modest and within our established guidelines.

In summary, Mrs B's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mrs B will be disappointed with the decision, but I hope she understand my reasons.

### **Putting things right**

In my provisional decision I said I intend to ask HSBC to rework Mrs B's account so that £5,114.37 (or if the current balance is lower, the full outstanding amount) is ringfenced and no interest should be charged on this amount until it is paid in full. I also intended to ask HSBC to refund the interest charged on Mrs B's June 2021 statement of £123.14, to reduce the outstanding balance and to pay Mrs B £250 for distress and inconvenience. I'm still satisfied this is a fair outcome for the reasons given previously.

### **My final decision**

I uphold the complaint. HSBC UK Bank Plc should;

Rework Mrs B's account so that £5,114.37 (or if the current balance is lower, the full outstanding amount) is ringfenced and no interest should be charged on this amount until it is paid in full;

Refund the interest charged on her June 2021 statement of £123.14, to reduce the outstanding balance.

Pay Mrs B £250 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 March 2022.

Gregory Sloanes  
**Ombudsman**