

The complaint

W, a limited company, complains that HSBC UK Bank Plc removed a payment from its account in error.

What happened

W says it sold an item for £5,100. It received a faster payment from the buyer on 16 August 2022 and released the goods. The next day HSBC reversed the payment. W says it has tried to pursue the buyer about this and hasn't been able to recover the money. W was unhappy that HSBC wouldn't help it or explain what had happened.

HSBC said in its final response to the complaint that it had reversed the payment and due to data protection wasn't able to give any details about its actions. It said that W would need to contact the remitter and/or take legal advice.

Our investigator recommended that the complaint be upheld, and the payment returned to W with eight percent simple interest and compensation of £150. She said that W hadn't consented to this payment being removed from its account. Industry practice determined that HSBC should investigate before removing the funds. W had shown it had a right to the money following the sale of the item. And there's no evidence that the payment wasn't genuine. This resulted in a detriment for W. The representatives of W had spent time pursuing this and the compensation reflected inconvenience. But W couldn't suffer distress and we couldn't compensate the representatives personally.

HSBC said it didn't agree. It referred to Section 12 of its terms and conditions which dealt with payments made into an account as a result of a mistake or fraud. And that based on these it had the right to remove the funds. Our investigator didn't accept here that a mistake or fraud had been shown to have occurred in crediting the payment. So, she referred the case for a decision as HSBC had requested.

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 know that HSBC has explained that although the payment showed in W's account there would have been a message confirming the payment was delayed. And that it wouldn't have affected the balance. It doesn't say that there'd been any systems error. I've not seen clear evidence about such a message or that the money didn't show in available funds. W has provided a statement showing that it featured in its statement balance on 16 August 2022 and was then removed the next day from that balance.

W understood this to be a faster payment and I don't consider had reason to think that this wouldn't be applied in the normal way or could in some way be 'uncleared' funds.

I agree with our investigator that there was no evidence of any mistake or fraud when the money was sent by the buyer here. There is no right to a refund of a faster payment. And if

say the sender had said a mistake had been made or there'd been fraud then I'd have expected HSBC to investigate this and have information to support it. In the case of a mistake there is industry guidance about how to approach this. But that doesn't say money should generally be taken back without reference to the recipient.

So, I find that the position should be that the money fairly remained in W's account pending any investigation. I don't have a basis to think given the information W has provided to support this being a genuine transaction that the money would later have been removed. At the highest I think this may have been identified as a buyer seller dispute.

I do need to think about whether W would be unjustly enriched now if this money was returned. And an example of that would be if the buyer had paid it in another way or W had say recovered the item sold. While I've seen that W has made reasonable efforts to pursue this I can't see that it has been successful. I find that paying the money back to W would be fair in the circumstances noting that this will now be a loss for HSBC.

It seems from the evidence of W's contact with a representative of the buyer that a decision had been taken by that buyer not to pay this money or deal with this issue. So, a large part of the inconvenience that's been involved here is down to that. I can though look at what HSBC did and the element of inconvenience it caused. And I agree that what our investigator has recommended about compensation is a reasonable resolution to the complaint.

My final decision

My decision is that I uphold this complaint and I require HSBC Bank UK Plc to:

- 1) Pay W £5,100.
- 2) Pay W simple interest of 8% per annum on the amount in (1) from 17 August 2022 to the date of settlement.
- 3) Pay W £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 21 February 2023.

Michael Crewe
Ombudsman