

## The complaint

Mr M complains HSBC Bank UK Plc trading as First Direct should be responsible for what happened to a payment made, which he intended to go to his partner who lives abroad. He wants the payment returned and compensation for the service he received. He wants losses refunded his partner experienced by using their credit card to pay for medical treatment. He also wants HSBC to issue a new public facing policy on international payments and to be fined.

## What happened

Our investigator detailed the relevant background to Mr M's complaint. In summary:

- Mr M instructed HSBC to make a payment to his partner. The country his partner lives in went on to have UK and international sanctions applied in relation to certain persons, banks, organisations, and activities.
- HSBC sent the payment, but the payment failed to credit his partner's bank account. Instead, it was held by an intermediary bank in the United Kingdom. That bank asked HSBC for more information via the Swift payment system about Mr M and the payment. HSBC passed on Mr M's responses, but the intermediary bank didn't send the payment on to Mr M's partner's bank.
- Mr M asked for the payment to be returned. HSBC requested the funds to be returned, which they did on multiple occasions. They say (referring to the change to the swift code that identifies each bank), that Mr M's payment is now held by the United States arm of the intermediary bank. To date, neither the UK nor United States intermediary banks have returned the payment.

Our investigator upheld Mr M's complaint in part. They said:

- HSBC did not assign the intermediary bank. This was determined by the Swift payment system. HSBC are not responsible for the decisions or actions of that bank, and they are not responsible for the payment not crediting Mr M's partner's bank account.
- HSBC tried to recall the payment multiple times, but the bank holding the funds had not returned them and was no longer responding to HSBC's chasers. HSBC has no authority over the intermediary bank, and it wasn't fair to require them to pay Mr M a sum equivalent to the payment he made.
- HSBC agreed as a gesture of goodwill to refund the transaction fee Mr M incurred making the payment.
- HSBC communicated with the intermediary bank as they should have, but they ought to have kept Mr M better informed. They didn't update him because they didn't have a substantive update to give, but they still should have told Mr M about what they had done. £50 was a reasonable sum to make up for their failure.

- Mr M wasn't satisfied with HSBC's published policies on potential risks when making an international payment. But fining a bank is a matter for the regulator and not our service.

HSBC agreed with our investigator's recommendation, but Mr M did not. He asked for a final decision from an ombudsman, so his complaint is with me to decide. He emphasised the following, which I have summarised:

- HSBC failed to mention the risks of making international payments in their online information
- HSBC should be responsible as custodian for the failure of funds to arrive in his partner's account. He used the comparator of a courier being liable as principal for the failures of its sub-contractors to deliver goods.
- He disagreed with our investigator's analysis of the account terms. He says HSBC had no reason to believe any law would be breached or they could receive criticism.
- Mr M and his partner have not broken any law and they are not subject to sanctions. His partner's bank was not subject to sanctions when the payment instruction was given.
- HSBC charged a fee for the payment, which shows they agreed to carry out a service they didn't provide. It's unfair that through no fault of Mr M the payment wasn't received or returned to him
- Mr M asked our service to obtain information for him in the event I don't decide in his favour.

### **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 decided to uphold Mr M's complaint in part, but I'm not requiring HSBC to pay more compensation than our investigator recommended. I'll explain why.

Firstly, I'm aware that I've summarised the events in this complaint in less detail than Mr M and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr M feels HSBC should be responsible for the payment either not being paid to his partner or for the failure of other banks to return it. I've no doubt this has been a very frustrating and concerning time for him. But I don't find HSBC are liable in the same way as a courier who contracts with other parties to ensure delivery of goods. As HSBC has explained, they did not assign the intermediary bank and at the time of the payment instruction the intermediary bank acted for his partner's bank with regard to payments made GBP from the UK.

The acts or omissions of the intermediary bank (whether right or wrong) and the consequences which resulted do not lie at HSBC's door. I don't find that by charging a fee when acting on Mr M's payment instruction HSBC were agreeing to take responsibility to ensure the payment reached its intended destination.

HSBC didn't decline Mr M's payment. Instead, they followed his mandate by acting on his payment instruction and sending the payment. I have seen no evidence to show they made an error when doing this. I don't find HSBC's terms and conditions obligate them to ensure the payment was received by his partner's bank or that they mean HSBC needed to make up for the potential failures of the intermediary bank.

International payments often involve other banks than the sending and beneficiary bank, as many banks don't have direct relationships with one another. Here, it's the intermediary bank and not HSBC that holds the payment, and I'm satisfied HSBC are not responsible for that bank's decisions. I understand Mr M doesn't have a direct customer relationship with the intermediary bank, and it's put him in a difficult position as he says the intermediary bank isn't helping, but that doesn't pass on responsibility to HSBC.

The online information published by HSBC which Mr M highlighted doesn't mention the risks of international payments. But even if there was such a reference, I'm not persuaded this would have stopped Mr M instructing HSBC. At the time of giving the payment instruction and HSBC sending the payment, neither party would have known the payment wouldn't credit his partner's account. Neither am I directing HSBC to change what it publishes on international payments. What they do and don't publish is really a matter of their broader commercial decision making and policy, and I don't find a direction to this end would be a proportionate outcome to Mr M's individual complaint and the loss he experienced.

HSBC didn't make an error acting on Mr M's payment instruction, but I would expect them to have made reasonable efforts to try and recall the payment. I find they contacted the intermediary bank on multiple occasions asking for the funds to be returned, but that bank failed to return the funds. I'm satisfied HSBC did what I would expect in these circumstances.

Although HSBC were making reasonable efforts to recall the funds, they ought to have kept Mr M updated even though the update would have been that the intermediary bank wasn't responding or acting on their requests. This would have at least provided some consolation that HSBC weren't ignoring Mr M. I find £50 is appropriate for the frustration not hearing from HSBC no doubt caused him, as well as the potentially inaccurate information he might have received at times when communicating with HSBC.

HSBC correctly followed their process when sending the payment, but as a gesture of goodwill they agreed to refund the fee, which I think is reasonable. I don't find their gesture means they are accepting liability for the payment not crediting Mr M's partner's account or not being returned to him.

Mr M asked for legislation I am relying on in making this decision. But I haven't found there is a basis in law or regulations which would obligate HSBC to be responsible for the independent decisions/acts of the intermediary bank, who aren't acting on HSBC's behalf.

Mr M has requested evidence that the payment breached a sanction, regulation or would have received criticism from any government. I don't have evidence to show this. HSBC didn't have a sanction concern which is why they sent his payment. The intermediary bank it appears formed their own concerns, but I'm not deciding a complaint about that bank and whether they acted fairly. I can only consider the acts/omissions of HSBC in relation to Mr M's complaint.

Mr M asked our service to force HSBC to provide him with certain information. I've asked our investigator who gave their view on his complaint to see what can be shared in terms of the messages HSBC had over the Swift system with the intermediary bank. Sometimes information cannot be shared due to commercial sensitivity or where it is otherwise confidential. However, our investigator will revert back to Mr M on this matter, but it does not form part of my final decision.

Our service's role is to give an answer to the complaint Mr M made to HSBC and which he then brought to our service, and this final decision marks the end of the consideration of that complaint by our service. Our role is not to otherwise act for Mr M in order to obtain information he wants from HSBC.

### **Putting things right**

If HSBC UK Bank Plc haven't done so already I require them to pay Mr M £50 for not keeping him informed as they should have, and to refund the £5 fee for the payment he made.

### **My final decision**

I've decided to uphold Mr M's complaint in part. Subject to Mr M accepting this decision HSBC UK Bank Plc need to pay him redress in accordance with my instruction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 December 2023.

Liam King  
**Ombudsman**