

The complaint

Mr B complains that HSBC UK Bank Plc did not treat him fairly when he wanted to make an international transfer to a family member based abroad.

What happened

On 15 June 2022, Mr B instructed HSBC to transfer PHP 2,000,000 to a family member who was resident abroad. Mr B says the family member intended to pay interest at a rate of 5% a year. Mr B instructed HSBC to make that transfer in pesos, rather than sterling. He received a message to say the funds would be received by his family member within four days. HSBC then debited £31,790.86 from his account.

The funds were not received by Mr B's family member. Between 21 June 2022 and 1 July 2022, Mr B made various calls to HSBC, but he says HSBC told him the funds could not be traced.

On 1 July 2022, Mr B visited an HSBC branch. He said he was told the transfer had been rejected and he would receive the funds back in four days. That same day, HSBC wrote to Mr B to say that it had sent the payment as instructed. However, as his family member's bank had closed its account with HSBC's correspondent bank, it was not possible for the payment to be processed. HSBC said it was in the process of returning funds to Mr B's account and said it was currently experiencing delays. HSBC offered to pay £100 to Mr B in compensation.

The funds were not returned to Mr B and so on 8 July 2022, he complained to this service. Mr B says HSBC assured him that the funds would be returned to him on 22 July 2022. Nothing was received.

Mr B said that his family member no longer wanted to borrow money from him, so he had lost out on interest payments from them. He also said that he had lost almost £2,000 because of HSBC's error. He thought HSBC should pay £31,790.86 back to him.

On 27 July 2022, HSBC replied to our investigator and said the return of funds was taking longer than expected due to a high volume of requests. It offered to pay 8% interest on the funds from 25 June 2022 up to the date Mr B got his money back.

On 28 July 2022, HSBC refunded £29,658.85 to Mr B's account, which was significantly less than had been debited from his account on 15 June 2022. Mr B did not think this refund was fair. His refund had been calculated as at the exchange rate on 28 July 2022. Mr B thought HSBC should pay back the same as had been debited from his account. Mr B also thought this service should tell HSBC to pay him £375,000 in compensation, along with further interest.

Our investigator looked at all of this and thought HSBC should do more than it had to put things right for Mr B. Our investigator said that HSBC should change the date the exchange rate was calculated from and pay a further £100 to Mr B in compensation. In total, our investigator thought that HSBC should pay Mr B a further £1,107.72 than had already been refunded.

Mr B did not accept that view and so the matter was passed to me for an ombudsman's decision. I asked our investigator to make some more enquiries about a SWIFT message

that appeared to have been received by HSBC in the UK on 16 June 2022 informing it that Mr B's transaction had failed. HSBC told our investigator that it had received this message.

I then issued a provisional decision in this matter. I said:

“When Mr B signed up for an account with HSBC, both he and HSBC agreed to be bound by the account's terms and conditions. In respect of sending money electronically in a currency that is not sterling, the terms and conditions state:

“If the payment is returned to us or we can't make it for any reason, we'll reverse it using the exchange rate at that time. The exchange rate might have changed. So the amount we pay back may be more or less than we originally took from your account.”

Exchange rates can change frequently and unpredictably. What the term and conditions mean in practice is that if a non-sterling transfer is made from Mr B's account and then something happens to stop the transfer being successfully made, there's no guarantee that he'll get the same money back. If Mr B wanted to be sure he got the same money back if there was a problem, it would have been necessary to make the transfer in sterling.

By the time Mr B's refund was processed, the exchange rate had changed. So, I'm satisfied that HSBC acted within its terms and conditions when it paid Mr B less back than had been debited from his account on 15 June 2022.

That said, I also have to consider whether HSBC has applied its terms and conditions fairly. I'd also expect HSBC to have returned Mr B's funds within a reasonable time. And in this case, my provisional view is that I don't think it did. I say this because Mr B made the initial transfer from his HSBC account on 15 June 2022.

On 16 June 2022, HSBC received a SWIFT message from its correspondent bank stating that Mr B's transaction had been cancelled, that the file had been closed and that no further action would be taken. It is not clear what action, if any, was taken by HSBC in respect of this SWIFT message.

On 1 July 2022, HSBC was able to tell Mr B that the funds had been located. However, there seems to have been some confusion because it appears HSBC then sent several SWIFT messages to chase the transfer and request cancellation, even though the file with the correspondent bank had already been closed. During this time Mr B was becoming very concerned about the whereabouts of his funds. HSBC told our investigator it accepts its continued chaser messages to have been an error.

I understand HSBC would usually expect funds to be returned to Mr B within four to seven working days from 16 June 2022. However, funds were not returned to Mr B until 28 July 2022. No specific reason appears to have been given for this delay save for HSBC having a high volume of requests.

I said above that I'd expect Mr B's funds to have been returned within a reasonable period of time. As four to seven working days is the usual time it would usually take for funds to be returned, I think such a timeframe would have been reasonable in this case. However, it took six weeks for Mr B's funds to be returned to him.

During that time, Mr B appears to have been caused some worry, particularly between 16 June and 1 July 2022 when HSBC was apparently unable to explain what had happened to his funds. I accept that during this time, Mr B was very worried about whether his money could be traced and if or when it would be returned to him. The amount of money in question was significant and I can see why the prospect of this money going missing caused Mr B some considerable concern. Mr B appears to have been put to a fair amount of inconvenience in making various calls to HSBC to chase his funds and visiting a branch to find out what had happened in his case.

With all of this in mind, I think HSBC needs to take action to put things right for Mr B.

I haven't been provided with HSBC's exchange rate figures for the whole period of four to seven working days after 16 June 2022. But our investigator said that HSBC should refund Mr B as the exchange rate was at 25 June 2022. At that time, HSBC's exchange rate was 65.7964571. I think that is reasonable given that this is roughly the midpoint of the four to seven working days. I also agree with our investigator that it is reasonable for HSBC to pay 8% simple interest from this date to be calculated up to the point Mr B got his money back.

Our investigator said that he thought HSBC should pay £250 to Mr B to compensate him for the trouble and upset he was put to in chasing this matter. However, I think Mr B was put to some considerable inconvenience here and it is clear that he was very worried and concerned about where his money was. It took several calls, a visit to an HSBC branch and several weeks before the money was returned. With that in mind, I think HSBC should pay £500 in total to compensate Mr B for this.

As I said above, Mr B said that he thought HSBC should pay £375,000 and considerable interest in compensation. He believed HSBC had acted fraudulently and negligently in its dealings with him. Mr B said that he had lost work and his health had been very significantly affected because of HSBC's alleged actions. Mr B told us that he'd had to travel abroad to improve his health. He also said his family members had also seen a deterioration in their health because of HSBC.

To be clear, it is not within the remit of this service to determine whether HSBC has acted fraudulently or in a criminal manner – that would ultimately be a matter for a criminal court.

That said, it may be reassuring for Mr B to know that I have seen no evidence to suggest that HSBC acted maliciously or fraudulently in its dealings with him. There was a delay in Mr B's funds being returned to him, which HSBC appears to accept was an error. I know Mr B feels very strongly, but I can't in any way reasonably say that HSBC set out to deliberately or fraudulently cause Mr B a financial loss.

There was a suggestion that Mr B thought HSBC had not been upfront because it said that the reason the transfer failed was because his family member's account had been closed. I can see Mr B went to some efforts to show that the family member's account was still open. I need to clarify that what HSBC said was that the family member's bank had closed its account with HSBC's correspondent bank and that's why the transfer couldn't be completed – it didn't say that the family member's account had been closed.

Mr B said that HSBC should not have accepted his transfer in the first place if it knew the family member's bank had closed its account. However, I understand it is the responsibility of the receiving bank to update such payment instructions and so I can't say HSBC is at fault in that regard.

I am sorry to learn that Mr B has a number of medical conditions. I can see that he says HSBC is responsible for the onset and deterioration of these conditions. However, I haven't seen enough evidence for me to find that HSBC was the sole cause for the onset or severity of the conditions Mr B told us about. That said, I do recognise that the delay in returning Mr B's funds would have likely caused him some worry. And I'm provisionally satisfied that the additional compensation I set out above is fair compensation for that.

Mr B also told us about health problems suffered by his family members, which he said HSBC was responsible for. However, in considering the rules that apply to this service, I couldn't make an award for difficulties caused to Mr B's family members even if it could be established that HSBC was at fault in that regard.

Mr B said that he'd lost out financially because of HSBC's delays because his family member no longer wanted to borrow money from him and he'd lost their interest payments.

He also said he'd lost an investment opportunity in addition to that. I haven't been provided with any documentary evidence as to the interest Mr B says his family member was going to pay. And I haven't seen anything to reasonably suggest HSBC was the sole cause of Mr B losing out on an investment opportunity. With that being so, I can't find that HSBC should pay compensation for these things.

I know Mr B will be disappointed with my decision, but HSBC appears to have acted within its terms and conditions when it refunded less to Mr B than had been debited to his account on 15 June 2022. That's because the exchange rate had changed. There were some delays on HSBC's part and I intend to tell it to put things right..."

HSBC responded to say it accepted my provisional decision.

Mr B did not accept my provisional findings. By way of brief summary, he reiterated his view that HSBC had acted fraudulently. He also provided two letters ostensibly from his family member. The first letter was dated 14 June 2022 requesting a loan of 2 million pesos to be repaid over five years with an annual interest rate of 5%. The second letter was dated 28 June 2022 whereby the family member appears to be withdrawing the loan request. Mr B also provided some screenshots of a text conversation between him and the family member.

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 am not persuaded to depart from my provisional findings. I'll explain why.

I know Mr B feels strongly that HSBC has acted fraudulently. But I said in my provisional decision that it was beyond the remit of this service to determine whether there had been any fraud. My view remains that I haven't seen anything to suggest HSBC deliberately set out to deprive Mr B of money.

I've carefully considered the documents Mr B provided ostensibly from his family member. I note there are some inconsistencies in these documents compare to the information Mr B gave to us earlier in his complaint.

For example, I say this because the letter Mr B provided from his family member appears to show that the investment opportunity was withdrawn on 28 June 2022. However, I can see that in documentation sent to our service earlier in the complaint that Mr B was still trying to send funds to the family member in July 2022. If the investment had been withdrawn in June, it is not entirely clear to me why Mr B would still be seeking transfer of the funds in July.

Mr B also said the screenshots he provided showed that the family member required the funds by 27 June 2022. The screenshots have been translated into English and from the information I have seen, I can see there was discussion about Mr B saying the family member should receive funds by 27 June 2022. But I haven't seen anything in that interaction to indicate a business opportunity, or that such an opportunity would be withdrawn if funds were not received by 28 June 2022.

With all of this in mind, I remain satisfied that HSBC needs to put things right for the reasons sent out in my provisional decision.

Putting things right

To put things right, HSBC must:

- Calculate the refund of PHP 2,000,000 to Mr B as at the exchange rate on 25 June

2022, which was 65.7964571. HSBC will then need to deduct the £29,658.85 already paid to Mr B from the amount it will now owe.

- Pay simple interest* on Mr B's funds from 25 June 2022 up until the date Mr B gets or got that money back. The rate of interest is 8% per year.
- Pay £500 to Mr B to compensate him for the distress and inconvenience I have identified above. I understand £100 may have already been paid to Mr B in this regard. If that is the case, HSBC may deduct that amount from what it will now owe Mr B.

* If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I require HSBC UK Bank Plc to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 July 2023.

Nicola Bowes
Ombudsman