

## The complaint

Miss D complains that HSBC UK Bank Plc failed to act appropriately when informed that a payment made to an account held with them was as the result of a scam.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In October 2021 Miss D made two payments on consecutive days to an account held with HSBC. These were for €15,000 and €10,000. The payments were made from Miss D's bank 'S' which is based outside the UK. At the time she believed she was investing with a company I'll refer to as 'W'. But when she received no confirmations in relation to her payments, she discovered an issue with W and concluded she'd been the victim of a scam.

Miss D says she reported this to HSBC via S on 29 October 2021. Ultimately HSBC said they were able to recover all of Miss D's loss, but they required an indemnity from S before they would return the funds. S said that they don't provide indemnities in these situations.

The complaint was referred to our service and one of our Investigators recommended that it should be upheld. He didn't think, in this case, it was fair and reasonable for HSBC to insist on an indemnity before returning the recovered funds. He also thought that 8% simple interest should be added to compensate Miss D for being without these funds. HSBC contested this and also said that they didn't think interest should be added. Miss D said that she was happy to be refunded without interest as she urgently wanted the €25,000 to be returned. HSBC said that they still couldn't return the funds without an Ombudsman's decision directing them to do so. As such, the complaint was passed to me to decide.

In January 2024 I issued a provisional decision in which I said:

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

*As my outcome is slightly different to that of our Investigator, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision. It doesn't seem to be in dispute that Miss D was the victim of a scam and that the money HSBC have recovered is from her payments.*

*I understand that HSBC's process is to only return funds to the remitting bank upon receipt of a satisfactory indemnity. HSBC is entitled to have such a policy to protect itself from further claims for the funds. But in the circumstances of this complaint, I can see that HSBC were informed by S on or around 31 December 2021 that they won't provide an indemnity. HSBC then maintained their position and didn't return the funds to Miss D. I don't think this was fair and reasonable.*

*HSBC seem to accept that their customer has no entitlement to those funds. And as the only payment into that particular account seems to be Ms D's, it likewise doesn't appear to be in dispute that the recovered funds are the same as those she sent. In these circumstances I*

*don't think it's reasonable for HSBC to still insist on an indemnity to return the funds. The end result of HSBC's decision is that the funds remained with them, rather than with Miss D who sent them as a result of a scam. Despite HSBC's policy about an indemnity, in the circumstances of this complaint, I think HSBC should have returned the funds soon after learning that S can't provide an indemnity. HSBC didn't return the funds to their customer (as I've mentioned before, they accepted the accountholder wasn't entitled to them), and based on the evidence I've seen, I agree with that – they also have no entitlement to them themselves.*

*As I think Miss D's funds ought to have been returned sooner, I think that interest on that amount should be payable. It's apparent from the details of the scam that Miss D was looking to invest her funds. The 'scam' investment was for a fixed term with a guaranteed return. That leads me to conclude that Miss D most likely wouldn't have wanted to put her funds into investments with any meaningful level of risk. And in these circumstances, I think it is appropriate to look to the rates published by the Bank of England showing the average return from one-year fixed rate bonds. These are the average rates that banks and building societies are advertising for fixed term, fixed rate deposit accounts. I'm not saying this is exactly how Miss D would have invested her money, but it represents the sort of return she would have achieved with no/little risk to her money. Details of the rates available each month for the relevant years can be found on [this link](#).*

*And as HSBC were aware that S weren't going to provide an indemnity at the end of 2021, I think interest should be payable from 21 January 2022 (taking account of the fact that arranging the return between the banks would likely have taken a few weeks to facilitate) until the date of settlement.*

### Putting things Right

*HSBC should return the €25,000 to Miss D.*

*HSBC should also calculate and pay the return Miss D would have received had she invested €25,000 on 21 January 2022 for 12 months using the rate available from the Bank of England's average return from one-year fixed rate bonds at that time. This interest should be compounded and calculated again each year between the 21 January 2022 and the date of settlement, using the applicable interest rate for each further 12-month investment."*

Miss D responded to say she accepted my provisional decision. HSBC said they would return the funds upon receipt of my final decision, but they also made some further points that I'll address below.

### **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.

Some of HSBC's further submissions refer to the legal position as to the entitlement of the funds. It isn't the role of our service to determine this. It is my role to reach a resolution on Miss D's complaint based on what I believe to be fair and reasonable in all the circumstances. HSBC don't believe they've acted unfairly by securing, but not returning, the funds until such time that they have either a final decision from our service or a court order directing them to do so.

Broadly speaking HSBC's role upon receipt of a notification of fraud or scam is to secure funds in the account and begin an investigation. It is then for HSBC to make a decision

whether to return the funds to the sender, or to release them back to their customer. There might also be circumstances where there is a credible dispute over the ownership of the funds where them being placed into a holding account is reasonable, however in such cases this wouldn't be an indefinite position. At some point HSBC would need to reach a decision as it isn't reasonable for them to benefit from this money. But in the circumstances of Miss D's complaint, I don't think this is one of those cases.

HSBC were presented with an accountholder that had multiple reports of scam notifications. The nature of the scam reports were similar (that being an investment scam) and this wasn't in keeping with what HSBC knew about its customer. The sector of business that its customer was engaged in was distinctly different. And I've seen no evidence that HSBC's customer provided anything credible as proof of entitlement to these funds. So in this case, whilst I appreciate HSBC have said they never expressly made a decision as to ownership of the funds, looking at the steps HSBC has taken, I think by not releasing these funds back to their customer, they've implicitly decided that these do not belong to them.

I understand why HSBC wishes to protect itself against a potential claim (and the associated costs) for the secured funds. And I don't think it requesting an indemnity was unreasonable. But once it was informed that Miss D's bank wasn't going to provide one, a further decision needed to be taken – which was in essence what to do with the money. As I've mentioned already above, I think that on balance HSBC had already decided it wasn't going to release the funds to its customer. And I don't think it was fair and reasonable for it to hold onto them at that point. I think it would have been fair and reasonable for those funds to have been returned to Miss D. And I don't agree that, in this case, expecting Miss D to provide either a final decision from our service or a court order before doing so was reasonable.

As such, having considered HSBC's comments, I'm not persuaded to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must take the steps set out at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 27 February 2024.

Richard Annandale  
**Ombudsman**