

The complaint

A company, which I'll refer to as P, complain that HSBC UK Bank Plc (HSBC) failed to observe the arrangement that was put in place when it switched its account to another bank.

In bringing this complaint P is represented by its director who I've anonymised as Mr S

What happened

- In November 2022, P switched its bank account from HSBC to another bank which I'll refer to as B.
- As part of the process, HSBC closed P's account. And for a 12-month period afterwards, an arrangement was put in place whereby any late payments that were received on behalf of P, HSBC would in turn, forward them to B to be credited to P's new account.
- On 5 December 2022 one of P's clients sent a payment of €20,730.10 to HSBC intended for P's account.
- According to HSBC, in accordance with the arrangement just mentioned, on 7 December they tried to send the payment to B. But HSBC said they received an automated response from B saying P's account with them was closed.
- Mr S has told us that when after a couple of weeks, the funds hadn't yet reached P's account with B, he contacted the client to find out why. But the client told him they'd already made the payment to HSBC.
- Correspondence then took place between P and its client aimed at determining what became of the payment given there was still no sign of it. P wanted to know whether it had been returned to the client. However, the client maintained their position that they'd made the payment and that it hadn't been returned.
- On 8 June 2023, Mr S contacted HSBC about the matter. And after looking into things, HSBC confirmed the funds were in their possession.
- On 14 June 2023, HSBC returned the payment to the remitting bank - P's client's bank in other words. However, for a time the returned funds couldn't be traced. Eventually they were, and in September 2023, P received the payment.
- P believed HSBC were ultimately responsible for the events that happened and so on its behalf Mr S complained to the bank. He told HSBC that as a consequence of their error, he and other directors of P spent considerable time and effort to obtain the return of the funds.
- Mr S also said that the delayed payment impacted P's relationship with its clients who, as a result of these events terminated their relationship with P. He said this caused P a loss of approximately £250,000 in sales revenue.

In response to P's complaint, HSBC acknowledge they made errors. They said after the payment was returned on 7 December in light of the notification that P's account with B was closed, they failed to follow their internal process which was to return the funds to the remitting bank. Instead, they retained the funds and didn't return them until 14 June 2023.

In acknowledgement of this error, and to compensate P for it, HSBC offered to pay P interest on the retained funds at 8% for the period in which they'd held on to them. And they also offered a further £200 to P for the inconvenience which they also acknowledged resulted from their error.

P didn't think HSBC had done enough to put things right. In further representations, Mr S said – in summary that:

- P is a small business, and its cash flow was impacted and its reputation damaged.
- P had to contact its client multiple times first to establish whether they did indeed make the payment and secondly to find out from them if the payment had been returned.
- P asked HSBC on 8 June to resend the payment to B. But HSBC went against its instructions and instead returned the payment to the remitting bank. This caused yet further delays in it receiving the funds.

HSBC believed the compensation package they offered was fair and they didn't think they needed to do more. Therefore, as P's complaint remained unresolved, it was referred to this service to consider.

Our investigator didn't think that initially when HSBC received the funds from P's client, they made an error. He was satisfied that they acted in accordance with the arrangement that was put in place and attempted to transfer the funds to B, on 7 December. Furthermore, he didn't think it was unreasonable for HSBC to accept what they were told about the status of P's account since HSBC had no access to B's systems.

That being said, he concluded nonetheless that:

- HSBC's error was failing to act in line with their process when the funds were returned to them on 7 December. In other words, to return the funds to P's client via the remitting bank. Rather it took the bank approximately six months, until June 2023 before it did so.
- Although P would have liked the funds to be sent to B, when in June 2023 they were found still to be with HSBC, he didn't think HSBC made an error when at that point they followed their process and returned the funds to P's client via the remitting bank.
- HSBC's offer as noted above, fairly compensated P for the impact of HSBC's error.

Mr S didn't accept the investigator's conclusions although he explained that he was open to further negotiation with HSBC to resolve the matter.

To that end, Mr S submitted that according to his calculations, P's actual loss was in the order of £19,229.00. Broken down, he explained that the loss comprised charges for work carried out by three of P's employees to recover its funds. This was calculated at a charge out rate of £1,575.00 over 5 days - totalling £14,175.

In addition, Mr S felt P's legal costs of £5,055 should also be settled by HSBC. This was on the basis that such costs were incurred when initially P instructed lawyers to begin legal proceedings against HSBC in connection with this matter. However, according to Mr S in the spirit of compromise, P was willing to limit its claim to the payment by HSBC of its legal costs in full and final settlement of its complaint.

The offer was put to HSBC. But they declined P's proposal and so Mr S has asked that P's case be referred to an ombudsman for review and final decision.

The crux of Mr S' submission is that HSBC should make what he believed was a more reasonable offer of compensation. In particular, one that recognises:

- the time P spent correcting HSBC's errors; and
- the likely loss of a client because for five months HSBC failed to tell P they had its money. This in turn led to P's assumption that the client still had its funds which it then demanded and, in all likelihood, caused a souring in their relationship.

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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr S has provided extensive submissions to HSBC and to this service and I can see how strongly he feels about this complaint. I thank him for his submissions.

I also want to assure him that I have considered all the points he's made on behalf of P. I mean no discourtesy in saying this, but my decision won't address each and every point that's been made. That's because in keeping with our role as an informal resolution service and, as our rules allow me to do, I have focused on the issues I regard as material to a fair outcome of this complaint.

What error did HSBC make?

Based on the evidence I've seen, like the investigator, I'm satisfied that when HSBC received the payment on 5 December 2022, they did send it to B as they'd agreed to do as part of the process for switching P's account to B. I don't find therefore, that they did anything wrong in that regard.

That being said, after the funds were returned, HSBC took no immediate action. They've explained that given the transaction was unsuccessful, in accordance with their process they should have returned the payment to the remitting bank.

HSBC didn't do so at that point. Rather they held on to the funds until they were contacted by Mr S on 8 June 2023 when their investigation uncovered the funds. So, HSBC were at fault in that regard, and I'm pleased that they acknowledged this.

Return of the funds to the remitting bank

Mr S says HSBC failed to follow his instruction on 8 June to now return the payment to P. And he believes the bank was wrong for not following his instructions.

The payment was returned on 14 June 2023 and HSBC said they acted in accordance with their process when they did so. It is their case that this is what should have happened in December 2022 when they were notified P's account was closed.

I have no reason to doubt that was HSBC's process. We're not a regulator of financial businesses and so it is no part of my role as ombudsman to interfere with the internal processes of such businesses or to tell them how they should operate generally.

But I've thought about whether in spite of Mr S' instruction it was reasonable for HSBC to follow that process, nonetheless. Having done so I can't say this was necessarily an unreasonable approach to take. There is no obvious evidence the position regarding P's account which HSBC was told in December 2022 with B had changed. More to the point, what then transpired was that it took some time for the remitting bank to trace the funds.

But HSBC provided P with the information to be able to do so – in particular the unique reference for P to pass to its customer's bank in order to trace the funds.

I appreciate that having returned the funds to the remitting bank, it took a further three months to trace and in turn pay them over to P. But I cannot reasonably blame or criticize HSBC for that. The inability to trace the funds was not of HSBC's making. And it is not for me to speculate with whom the ultimate responsibility lay.

Loss of its client

P believes it lost the client because of the uncomfortable nature of the circumstances and the correspondence that ensued. In particular, although P's client had told it they'd made the payment, it appears P may have had some doubts which led to a number of further exchanges of correspondence.

Mr S has told us the loss of this client was in the order of £250,000 in terms of lost revenue. I am sorry to hear that. But for me to award compensation in this connection, I would need to find that HSBC's error did cause that loss.

But I cannot be sure it did. I have no evidence from P's client that was the case. And neither is P's evidence persuasive in this regard. P has told us HSBC's actions or omissions were potentially the root cause.

I am not able to make awards based on speculative losses or what may or may not have been. I cannot rule out the possibility that the loss might equally have been caused by P's repeated request to its client to account for the payment in spite of them maintaining their position that they'd made the payment.

Legal fees

P decided to explore possible legal action against HSBC. That was independent of this process. It is common practice in such cases for the parties to cover their own fees at least until trial where the successful litigant can recover their own fees. I'm not proposing therefore to make any award for legal fees.

Time spent dealing with these events.

Mr S has said he and others spent many hours in communication in an attempt to secure the return of P's funds. And I've noted the total cost attributed to this work, which was over a five-day period amounted to over £14,000.

It's important to note, however, that this is P's complaint although, as a limited company I accept P can be inconvenienced as a result of the bank's actions or failures. But, even in those instances, we wouldn't generally award compensation based on a company director's daily rate as Mr S would like to happen in this case. Instead, we consider the overall impact the error had on the complainant and make our awards accordingly.

So, I now turn to consider what then would be fair compensation which takes proper account of the delay in the return of P's funds for which HSBC could reasonably be held responsible.

I start by saying the aim of compensation is to put a complainant back into the position, or as closely as possible that they would have been in had the error complained about not occurred. Having said that, this easily stated objective is not easy to achieve in practice.

But to begin with I note that HSBC returned the funds to P via the remitting bank on 14 June 2023. It is accepted that there was delay in HSBC doing so. Because of HSBC's error, therefore, P was without its funds from 7 December 2022 to 14 June 2023. I agree HSBC should pay interest on the amount for that duration.

However, I do not think that period should extend beyond 14 June 2023, up to the date in September 2023 when P did eventually receive the funds. That's because I do not find HSBC were responsible for that delay. HSBC did as it was properly entitled to do which was to return the funds to the remitting bank. And as already noted, they wrote to P on 14 June with the appropriate reference. I don't think I can fairly blame HSBC for the delay in tracing those funds.

Next, I consider what is fair compensation for the inconvenience caused to P on account of the delay.

In coming to that conclusion, I've thought about the general framework which this service takes into account when arriving at compensation for inconvenience – further details of which can be found on this service's website.

Mr S contacted HSBC on 8 June 2023 about the missing funds. They were found and within six days returned to P's client's bank on 14 June. I've been presented with no persuasive evidence however, that in the period between 7 December 2022 and 8 June 2023, P suffered material inconvenience.

Putting things right

I'm satisfied that HSBC's offer which is to pay interest on the payment they held on to for the period 7 December 2022 to 14 June 2023 as well a further £200 for inconvenience this caused, together fairly compensates P for HSBC's error. I've not been persuaded they need take any further action.

My final decision

My final decision is I uphold this complaint and direct HSBC UK Bank Plc to settle it as follows. In full and final settlement:

- Pay P interest at 8% on €20,730.10 from 7 December 2023 to 14 June 2023.
- Pay P a total of £200 for the inconvenience caused to P

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 19 April 2024.

Asher Gordon
Ombudsman