

The complaint

Miss S complains HSBC UK Bank Plc unfairly restricted her account and failed to return to her some of the funds they held. She wants those funds refunded and compensation.

What happened

What follows repeats most of the background facts I set out my provisional decision. I repeat them here for the purpose of issuing my final decision.

Miss S held accounts with HSBC, including a current account. She opened her current account in the early 2000s when she was a student in the United Kingdom – she currently lives and works in another country.

Two large payments credited Miss S' account in 2019 – £14,000 in July 2019, and £8,000 in September 2019. The payments came from two different accounts held by a third party. Miss S made a £10,000 payment to an account she held with a third-party bank shortly after receiving the £8,000. Prior to this point, outside of several small regular direct debits, she used her account only occasionally.

Miss S says the two payments represented an exchange of Naira for GBP. She says she planned to purchase a property in the UK, so was increasing her funds held in the UK for this purpose.

The bank which sent the £8,000 contacted HSBC to report the payment as fraudulent and provided an indemnity for HSBC to return the payment, after which HSBC restricted Miss S' account in October 2019 to carry out a review. They recalled the £10,000 payment, which they put into a suspense account and continued to restrict Miss S' account during the remainder of 2019 and 2020.

During this time Miss S attended branch in November and December 2019 to explain the £8,000 payment. It appears she showed HSBC messages she had with the person she says she exchanged money with, as well as information to show an equivalent debit in Naira from an account she holds in the country where she lives.

Miss S referred a complaint to our service in 2020 about HSBC not releasing her funds. Prior to her complaint being allocated to one of our investigators, a 12-month freezing order was granted by a court of law over the current account in April 2021.

An investigator at our service issued a view in August 2021 and didn't uphold her complaint. They concluded HSBC were complying with their legal and regulatory obligations by holding the funds until their review was complete. Her complaint was closed as Miss S didn't ask for a final decision from an ombudsman.

On the freezing order's expiry, a forfeiture order was applied for by the police in 2022. Miss S has provided copies of the applications for both orders, the freezing order, a witness

statement she provided to the court during the course of the freezing order, and an email from the police which appears to have been sent to her then legal representative.

The police decided not to proceed with the forfeiture order, which Miss S says is because they said the funds she received were no longer deemed as from fraudulent means, and she had been cleared of any culpability.

After closing Miss S's account in June 2022, HSBC released the balance they held in the account to Miss S by cheque. Miss S told them they still held the £10,000 payment which they received back from her other bank. Miss S raised another complaint.

HSBC issued a final response letter in October 2022. They said they were obligated to return the £8,000 payment to the remitter, and as Miss S's account had closed, they had returned the remaining amount (£2,000) back to her other bank. They apologised for the delay in returning the £2000 and offered her £100.

Miss S was not satisfied with their response. She said HSBC hadn't told her what had been happening since the account was blocked or that the £8,000 was being investigated. HSBC couldn't have returned the £2000 as her other bank account had closed and she should have received the full £10,000 back.

HSBC told our service that after this time, they sent the £2,000 to Miss S' former bank on two occasions (presumably because they were unaware her account had closed), which the former bank sent back to them each time. They also said the original indemnity from the other bank where the £8,000 originated had an administrative error, which had since been corrected. They sent a cheque for £8000 to that bank in March 2023.

I issued a provisional decision earlier this month in which I didn't require HSBC to do anything further. I said:

"I do not require HSBC to take any further action than they have or to compensate Miss S. I appreciate Miss S will find my provisional decision very disappointing, so I'll explain why.

HSBC has important legal and regulatory responsibilities to meet when providing accounts to customers. Those obligations are ongoing and don't only apply when an account is opened. They can broadly be summarized as a responsibility to know their customer, monitor accounts, verify the source and purpose of funds, as well as detect and prevent other harm, such as financial crime.

HSBC will review accounts to comply with their responsibilities. And, it's common practice for banks and other financial service providers to restrict access to accounts to conduct a review - doing so helps prevent potential financial loss or other harm that could otherwise result.

I find HSBC acted fairly by blocking Miss S's account – they received a concerning report about the £8,000 payment from a third-party bank who were prepared to indemnify them in return for the funds. And I see why they would also have been concerned about the uptick in transactional activity involving large sums, considering how the account had been used previously. HSBC didn't have an obligation to tell her the basis of its concern or forewarn her of its intention to stop her accessing the funds they held.

Miss S has been consistent in her explanation about what the payments she received were for, and HSBC asked her to provide evidence to support what she said. But their review didn't need to be limited to what Miss S provided.

After considering all the available information and evidence, I'm satisfied HSBC's review progressed appropriately and I don't find they ought to have released the balance in Miss S's account for the period up to and including the duration of the freezing order and while it was clear the police were seeking forfeiture. HSBC had a duty to the court to ensure Miss S had no access to the account balance while the freezing order operated, and it was understandable why they held the balance once the police initiated an application for forfeiture.

Miss S says the police concluded the £8,000 and £14,000 payments were not received fraudulently and they cleared her of culpability. I appreciate her sentiment here, but I don't find the withdrawal of the forfeiture application necessarily means this. It could have been withdrawn based on other factors such as prospect of success, and it's not my role to make the assumption that the police believed she received the funds legitimately. Neither would it be HSBC's place to draw that conclusion without being told this by the police.

Seeking forfeiture is a statutory procedure applicable to certain persons, such as the police, where they can apply to take possession of property they believe is recoverable or intended for use in unlawful conduct. Clearly if a forfeiture order had been granted by the court, then HSBC would have been bound to comply with the order. But I don't find this means the withdrawal of the application obligated them to release all the funds to Miss S.

Banks can return funds to sending banks where they have valid concerns. Here HSBC received a fraud report about the £8,000 payment from a third-party bank, and they were also made aware that the police had been investigating Miss S to the extent that they initially decided to seek forfeiture.

It's quite possible Miss S received funds perfectly legitimately and had no intention of acting unlawfully with them. But I'm satisfied HSBC were able to still consider there was a risk she could have. And, when balancing what she had said against there being identified victim(s) in relation to the funds she received, and the wider the context of the police's involvement, I don't find their decision to return the £8,000 unreasonable or that it would be appropriate to require them to pay her this sum.

Miss S should now have received the £2,000. But I can't see HSBC were previously aware her other bank account had closed or that they acted unfairly when trying to return it to that bank. It may be that on receiving the sum back a second time they ought to have been more proactive when exploring how best to then return it. But in the broader context of their concerns, I don't find requiring them to pay interest to Miss S on that amount or other compensation would be appropriate."

Both HSBC and Miss S replied to my provisional decision before the deadline and neither had anything further to add. So, I am now ready to make a final decision on Miss S' complaint.

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 not to uphold Miss S' complaint for the same reasons I gave in provisional decision. My provisional findings are copied above and now form my findings for this final

decision.

My final decision

My final decision is I do not uphold Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 22 April 2024.

Liam King
Ombudsman