

## **The complaint**

H, a limited company, complains that HSBC UK Bank Plc unreasonably withheld funds paid into its account, which affected the running of the business. It would like to be compensated for the disruption, and to be given a written exoneration.

## **What happened**

The facts of this case are well known to both parties, so I will present them only briefly here. H is represented by its director Mr D.

In November 2022 H received a payment of approximately £1.4million from an investor abroad. But after this amount credited the account HSBC removed it from the account to carry out checks. The sending bank had sent a request to recall the funds. The bank asked Mr D to show H's entitlement to these funds, which he provided. The sending bank later cancelled the recall request, but HSBC retained the funds.

The investor then arranged to send the payment to H again. They initially sent a test amount of £100, which credited the account. The investor then sent the remainder of the approximately £1.4million. The sending bank later requested the funds be recalled.

H's accounts with HSBC were blocked on 16 December 2022 but unblocked and the payments made available to H on 21 December 2022. One payment was returned to the sending bank on 29 December 2022.

Unhappy with what had happened H complained to HSBC. The bank responded to say they had a regulatory requirement to treat fraud allegations seriously, and the actions they took were in line with the terms of the account.

Not satisfied with this answer H referred the complaint to our service, saying HSBC had told the sending bank that both sets of funds had entered their account, when they hadn't, and the events had damaged the relationship with its investor, and delayed the start of its business. It asked for compensation of over £170,000 for losses it incurred. It also asked for a written exoneration confirming no fraud or dishonesty by H had occurred.

Our investigator thought the complaint should succeed in part. They were satisfied that HSBC have the right to investigate the payments. But they felt that by telling the sending bank both payments had credited H's account, HSBC had confused the issue leading to the second recall request. This prolonged the review of the accounts, and caused reputational damage to H. They suggested HSBC pay H £500 compensation.

This was accepted by HSBC. But H rejected this, saying the events had cost it two months' worth of business, and had taken considerable time and effort by the directors to resolve the issue. They asked for a formal written exoneration from HSBC confirming no fraud or dishonesty from H.

As no agreement could be reached the complaint has been passed to me to decide.

## 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 read and reviewed every submission by both parties, but what I'll be concentrating on in this decision is what I consider to be the key issues involved. This is in line with our remit to resolve complaints quickly and with a minimum of formality. If I don't mention something in particular, it isn't because I've failed to take it on board, or not consider it carefully. It's because I do not see it as necessary to reaching a fair outcome.

The complainant here is H – the limited company which holds the account with HSBC. Some of the impact complained about is to the directors and staff of H personally. But under the rules of our service, I can only consider the impact and disruption caused to H directly, as the company is the eligible complainant.

HSBC, like all regulated financial businesses in the UK, have numerous legal and regulatory obligations to meet when providing accounts to their customers. Broadly these obligations can be described as a duty to monitor accounts for signs of financial crime, or that a customer may be victim of financial distress or harm.

It's right that HSBC treat any allegation of fraud seriously. In this case the sending bank sent a SWIFT message asking for the funds to be returned because of fraud. Section 12 of the terms of H's account – "*Payments into your account by mistake or fraud*" – outlines that HSBC can remove funds if they suspect any payment into the account was made by fraud. So, H ought reasonably to have been aware this was a possibility. I don't see that it's unreasonable that HSBC remove these funds while they investigate.

The sending bank sent a further SWIFT message cancelling the recall several days later. But I don't see HSBC were obliged to release the funds at this point. They had begun their internal processes of reviewing the payment and account activity, which they are entitled to do, and is in keeping with their legal and regulatory obligations. This wouldn't solely rely on the fraud report, and they are not obliged to follow instructions from the sending bank.

There is no specific timeframe I'd expect a review to be completed in, but it would be reasonable for it to be completed as quickly as possible. I can see HSBC promptly requested information about H's entitlement to the payment. H responded quickly which allowed HSBC to progress the review.

From what H has told us the investor arranged to send the amount again, only because their bank had been advised by HSBC the money had been returned. In fact, the funds were still being held by HSBC at this point. I've seen nothing that disputes this point, and it isn't reasonable for the bank to have provided this incorrect information.

But I've also seen nothing to suggest that HSBC advised the payment should be sent again – this seems to have been an agreement between H and its investor. I've seen nothing to suggest HSBC were party to these discussions or advised anyone this should be done. I can see why this would now cause confusion to the bank and cause delays to the review. HSBC had at this point received proof of entitlement to one payment of approximately £1.4million which they were investigating, but now received two.

In any event, I can see the second payment entered H's account and the funds were utilised. This will have mitigated the disruption to H somewhat.

I wouldn't necessarily expect HSBC to provide H, or any other parties, with updates on the status of any review being carried out. But considering the unclear communication I agree HSBC should have been clearer about what was happened. H has shown that the bank told the sending bank that both sets of funds had credited the account and the recall request wasn't actioned. In one sense this is correct – both sets of funds had credited the account – but lacked the context that the first payment was still being held for review. But, as mentioned above it's not necessarily incumbent on HSBC to tell the sending bank that one payment was under review.

It's also clear that when H was querying the status of the payment with HSBC, the bank seemingly didn't realise two payments had been made. This wasn't clarified until 16 December. At this point the investor had asked the sending bank to recall the second payment as fraudulent.

H has argued that the investor did this because of the information given by HSBC to the sending bank – although I'm not persuaded this was the sole reason. The investor had already asked to recall the first payment as they had concerns of fraud, and this was before HSBC had been in contact with the sending bank. I think it likely the investor had concerns in general, rather than specifically anything HSBC had done. Although HSBC's response did not help these matters.

As there had now been a second fraud report, I don't see it as unreasonable that HSBC blocked H's account. Again, there is provision for this in the terms of the account, and I find it was in line with the bank's legal and regulatory obligations.

The directors attended a HSBC branch a few days after the block, to attempt to resolve the situation. On 22 December 2022 the review was completed, and HSBC released the restrictions on the account and made all the funds available to H. While it was no doubt disruptive to H to not have access to the account, there's always likely to be a degree of disruption when an account is under review. What I'd expect a bank to do is keep this to a minimum. In this case the length of time to complete this review wasn't unreasonable.

While the directors of H no doubt found this situation frustrating, HSBC haven't been unreasonable in reviewing the first payment, and later the account. So, I wouldn't look to compensate for the disruption caused directly by this, such as H's claimed losses from not being able to trade for this period.

But HSBC should have been clearer about what was happening – one payment was under review and hadn't been returned to the sending bank. HSBC were obviously confused about how many payments had been received when speaking to H. I'm minded this caused more disruption than was necessary to the running of the business.

In looking how to compensate for this – I'm not persuaded it's reasonable to expect HSBC to pay directly for the director's time. But this wouldn't be a loss directly to H, rather to the directors' personally. In any case, the role of a director typically involves resolving issues such as this when they occur and would be an expected part of their tasks for the business. But I do accept the amount of time the directors spent talking to HSBC, only to receive incorrect information, will have taken the directors away from other duties within the company. And I'm satisfied this will have had an impact on the running of the business.

I'm also not minded that HSBC should bear H's legal costs – it's ultimately up to H whether they ask for legal representation, but the issues with HSBC were resolved directly with the bank. Legal representation wasn't required or expected. And the root cause of the issues H had with HSBC is the investor recalling the original payment.

H has asked HSBC to provide a written exoneration that there has been no fraud on its part. I don't see this is reasonably within HSBC's purview to decide, and I've not seen anything to suggest this is something HSBC have accused H of. The bank reviewed the account, and ultimately decided to carry on the banking relationship, which suggests to me they had no further concerns.

Taking everything into account, I'm satisfied that £500 is a reasonable reflection of the disruption caused to H's business by HSBC's poor communication.

### **My final decision**

My final decision is that I uphold this complaint and HSBC UK Bank Plc must pay H £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 18 July 2024.

Thom Bennett  
**Ombudsman**