

## **The complaint**

Ms J complains HSBC UK Bank Plc unfairly retained funds that belonged to her.

## **What happened**

In June 2020 Ms J made a payment of £82,554.83 to a HSBC account. Ms J says the payment was for consulting services which she never received, and she had been the victim of a scam.

This service considered a complaint at this time as HSBC declined the return the funds to Ms J. An Investigator found that HSBC had acted reasonably as Ms J's bank – who I will refer to as T - had not send an indemnity to HSBC.

Ms J pursued her complaint through alternative avenues. This included raising a complaint with Australian Financial Complaints Authority about T. Ms J was unable to recover her funds through this process.

In July 2023 T sent HSBC an indemnity. Mrs J says she asked T to do this based on the findings of her first complaint with this service. However, as the funds were no longer in the account in question HSBC declined to refund them to Ms J. Dissatisfied with the response from HSBC, Ms J raised a formal complaint. HSBC reviewed Ms J's concerns and said that it would not be able to look into her concerns or assist further due to the passage of time and because she was not a HSBC account holder.

Ms J asked our service to review her complaint. Initially an Investigator reviewed the complaint and found that it was one our service could not consider due to the rules concerning payments into an incorrect bank account. However, this was later clarified, and the complaint is one we can consider as Ms J is complaining against HSBC as the receiving bank regarding a payment, she says she was scammed into making.

Following this an Investigator looked into the merits of Ms J's complaint. The focus was on HSBC's actions once it had received the indemnity from T. Based on the available evidence, the Investigator found that HSBC had acted reasonably. This was because the indemnity was sent years after the payment was made and the funds were no longer available for HSBC to refund.

Ms J remained unhappy and asked for her complaint to be reviewed by an ombudsman.

## **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.

Firstly, I am sorry to see Ms J has had cause for complaint. I don't underestimate the worry this situation has caused, and also the stress of dealing with the complaint about it. Having looked at the complaint fully, my review of the evidence has led me to the same overall

conclusions as the Investigator previously set out and for much the same reasons. I will explain why.

Ms J's complaint has been ongoing for many years and there are various issues involved. So I think it's important to set out what exactly I am considering in this decision and what I am unable to comment on. Ms J initially brought a complaint to our service against HSBC regarding the payment she made into an account it held. As part of this complaint Ms J said HSBC allowed a fraudster to open the account and this resulted in her loss. This complaint was not upheld, and our service found HSBC had acted reasonably, especially given T didn't provide an indemnity. In this decision I will not be commenting any further on this aspect of Ms J's complaint, or HSBC's decision to offer an account to the individual Ms J says is a fraudster.

In the intervening years Ms J persuaded T to issue HSBC with an indemnity. This is the key part of Ms J's current complaint. But I must highlight that Ms J is not a direct customer of HSBC and although I have been provided details about the account held with HSBC, there is significant amounts of information that I won't be able to disclose to Ms J. This is because it relates to HSBC's customer, and I am not at liberty to share account details regarding this third party.

I now turn to the indemnity. HSBC has confirmed that it received an indemnity claim for the full £82,554.83 from T in July 2023. HSBC reviewed the indemnity, however as the funds in the account had been removed it was unable to refund them to Ms J. I must highlight that when HSBC received the indemnity, it is essentially being asked by T to check the payment in and if the funds are still present. A bank may return funds, based on the information within an indemnity, if they are still available. In Ms J's case, HSBC wasn't under an obligation to compensate Ms J upon receipt of the indemnity. We would expect HSBC to review the indemnity and act on it in a timely manner and provide clear information to the requesting bank. Looking at the evidence provided I can see that HSBC did check the details of the payment provided by T and explain the situation with the funds.

Ms J sent the payment in June 2020. I appreciate Ms J has tried to recover her funds through alternative avenues and she has provided details of this. Ms J has also provided details from the fraudster about the status of the account and the payment received. But as over three years had passed when HSBC received the indemnity from T it was inevitable that there were very limited actions it could take. I also wouldn't expect HSBC to compensate Ms J from its own funds – especially given that I haven't seen it has acted unfairly or caused Ms J to suffer this loss.

Ms J strongly believes HSBC should provide her with details of where the funds were moved to and what has been done with them in this intervening period. HSBC has provided me with details of the account, and what has happened to the funds within it, but this isn't information I am free to share with Ms J. I understand her deep frustration with this. However, HSBC has important legal and regulatory obligations, and a key part of this is ensuring customer account details are kept secure.

The Investigator on the complaint has explained to Ms J that the funds within the account are now held with law enforcement. This service is unable to provide further details about this, but this information should underline to Ms J that HSBC has taken its regulatory and legal obligations seriously and taken the appropriate actions with regards to the account Ms J paid the funds into.

I appreciate this process has been frustrating and confusing for Ms J and I know my decision will be disappointing. But I hope my explanation provides Ms J with some clarity, and she understands that her concerns have been carefully considered.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 20 November 2024.

Chandni Green  
**Ombudsman**