

The complaint

Mr T complains that HSBC UK Plc restricted access to his funds. He'd like the funds released and compensation for the impact on him.

What happened

Mr T has an account with HSBC.

On 9 March 2021 HSBC were informed by another bank, I'll call Bank R, that payments totalling £45,000 received into Mr T's account were fraudulent. On the same day the funds were removed from Mr T's account.

These payments were paid in on 17 February 2021, for £10,000, and 27 February 2021, for £35,000.

On 10 March 2021 HSBC contacted Mr T and asked him about the payments. He explained they were payments returned after an investment he'd made in a business I'll call A.

On 30 March 2021 they asked Mr T for documentary evidence to support the investment.

On 31 March 2021 Mr T provided evidence to HSBC. Including a copy of the shareholding certificate, investment agreement, and evidence of the investments in A.

But HSBC weren't satisfied with the evidence provided and decided to return the funds to source.

Mr T wasn't satisfied with HSBC's response so brought his complaint to our service.

Mr T explained to our investigator that he was the victim of a scam and the £50,000 investment he'd made wasn't genuine. He also provided evidence of the conversations he'd had with an investment company regarding the return of the funds. And the agreement for payments to be made to his account.

Our investigator shared this with HSBC, but the bank remained of the opinion they'd acted fairly.

Our investigator explained to HSBC that they didn't think the bank had acted fairly – and thought they should return Mr T's £45,000 plus 8% simple interest from the date of the restriction to the date of return.

Mr T accepted our investigator's outcome. But HSBC didn't, in response the bank said they don't believe Mr T was complicit in any fraudulent activity and was a victim of fraud, but their terms and conditions allow them to remove fraudulent funds from their customer's accounts.

They highlighted the term:

Section 13 When payments go wrong – what we'll do.

- If we suspect any payment into your account was made by fraud, we can remove it without asking you.

As HSBC didn't agree Mr T's complaint was passed to me for a decision.

On reviewing Mr T's complaint I came to a slightly different conclusion to our investigator. I explained that I thought HSBC's initial actions in restricting the funds were fair however Mr T provided sufficient evidence to show he wasn't complicit in any fraud. And received the funds in good faith. I therefore thought HSBC acted unfairly in returning the funds to source. I thought Mr T also experienced inconvenience as a result of Mr T's actions, so I recommended that HSBC pay Mr T £45,000 plus 8% from the date of the restriction to the date of release, plus £300 compensation.

Mr T accepted but HSBC didn't.

In summary HSBC argued they'd acted fairly. They reiterated that they received contact from Bank R who informed them fraudulent funds had been dispersed to Mr T's account – totalling £45,000. HSBC later received an indemnity and returned the funds to source.

HSBC explained they have an obligation to act swiftly on notification of fraudulent activity to recover any funds as quickly as possible. Their terms and conditions allow them to remove fraudulent funds without customer consent.

As HSBC didn't agree I've considered their comments, and reviewed my decision.

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.

In my Provisional Decision I said:

HSBC accept that Mr T wasn't complicit in receiving fraudulent funds. Mr T's provided evidence which shows he made an investment of £50,000, and as a result of him later discovering he was a victim of a scam – asking for and receiving the funds back in the form of four payments including, £10,000 and £35,000.

I've considered the relevant legislation and industry practice when looking at HSBC's actions in returning Mr T's funds to source.

The Payment Service Regulations 2017 dictate that the payer gives his or her consent to the execution of a payment transaction by employing the form and procedure agreed between them and the bank. The payer is the one who has to give consent, this can't be done by a third party. And if the payer doesn't give consent, the transaction will be considered as unauthorised. I've thought about what this means in Mr T's case - and it's clear that Mr T (the payer) didn't give consent to HSBC to withdraw the funds from his account to pay the sending bank - therefore I think the returned transaction of £45,000 was unauthorised. I've also considered what good industry practice tells me when a bank is notified their consumer has received fraudulent funds as a result of an Authorised Push Payment (APP) scam. Good industry practice states that when the receiving bank receives notification from the sending bank the receiving bank will need to investigate and establish whether the account is fraudulent and if funds remain. And they need to find evidence that the account holder obtained the funds fraudulently. Good industry practice dictates that when the receiving bank is put on notice that their customer may have perpetrated an APP scam it should investigate whether their customer is involved and has received the funds fraudulently. If the consumer

can show otherwise and disputes the claim, the receiving bank is under no obligation to return the funds to the sending bank.

I've thought about what that means in Mr T's case - and I'm satisfied, as our HSBC, that Mr T has provided a substantial amount of evidence to demonstrate he wasn't involved in the fraud, and instead he was under the impression he was legitimately receiving a refund of an investment he made. I understand that the origin of the funds was from a scam, however I'm satisfied that Mr T was also the unfortunate victim of an investment scam. And therefore shouldn't be deprived of the funds.

I appreciate that HSBC received a report of fraudulent funds from Bank R, and as good industry practice regarding APP scams states I'd expect HSBC to investigate this (as they did) and consider whether their customer, Mr T, was involved in fraud. Therefore I can't say Mr T's funds shouldn't have initially been restricted. However, I think the review should have only taken seven days from when HSBC were notified about the alleged fraud from Bank R. I say this as Mr T was very quick to respond to questions and evidence requested from HSBC. And I think within seven days of being notified HSBC should have been able to request evidence from Mr T, review it and assess that he wasn't complicit in the fraud. And unrestrict the funds.

I've considered the impact on Mr T from HSBC's actions. Mr T advised he was planning to purchase a property with the funds and he's experienced anxiety as a result. I've not seen any additional evidence to support what Mr T's said, however I think it's highly likely Mr T experienced inconvenience from not having access to his funds – and anxiety when worrying they may not be returned. For this reason I think HSBC should also pay Mr T £300 compensation for the distress and inconvenience caused to him.

I've considered HSBC's response to my provisional decision, but it doesn't change the conclusion I previously reached. I'll explain why below.

*HSBC have reiterated that they acted, as best industry practice dictates, to quickly recover funds reported as fraudulent by the sending bank. They then followed their terms and conditions which allow them to return funds to source *without* their customer's consent.*

*I've considered HSBC's points about the expectations on a business when receiving a scam report however I don't agree with their reasoning. I agree that HSBC have a responsibility to respond to a report from a sending bank regarding a potential scam payment, however good industry practice dictates that on receiving a scam report they also have a responsibility to *investigate* whether their customer is involved and has received the funds fraudulently. If the investigation concludes that the customer isn't complicit in the fraud then HSBC don't have the authority to return the funds to source. I'm satisfied this is detailed in the Payment Service Regulations 2017, which outlines the payer is the one who has to give consent, this *can't* be done by a third party. And if the payer doesn't give consent, the transaction will be considered as *unauthorised*.*

*I appreciate that HSBC's terms advise they can return funds to source without the customer's consent, however as Mr T *wasn't* complicit in the fraud I don't agree it was fair for the bank to apply the term in Mr T's case.*

Putting things right

I think HSBC should return Mr T's funds, £45,000, plus 8% from 16 March 2021 to the date these are returned.

I think it's likely Mr T experienced inconvenience from not having access to his funds – and

anxiety when worrying they may not be returned. For this reason I think HSBC should pay Mr T £300 compensation for the distress and inconvenience caused to him.

My final decision

My final decision is I uphold this complaint and direct HSBC UK Bank Plc to:

- Pay Mr T £45,000 plus 8% from 16 March 2021 to the date these are returned.
- Pay Mr T £300 compensation for the impact caused to him

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 September 2023.

Jeff Burch
Ombudsman