

The complaint

Mr and Ms P complain HSBC UK Bank Plc (“HSBC”) failed to follow their payment instructions in sending payments to Mr P’s ex-fiancé, and a retailer, in Russia. Three payments were refunded to Mr and Ms P, but a payment made in March 2022 of £500, hasn’t been refunded.

What happened

For simplicity, and as Mr P has been making submissions about this complaint, I will refer to him solely in most of this decision.

On 17 March 2022, Mr P successfully sent a payment to his fiancé’s Russian bank account. To keep matters simple, I’ll refer to this bank as ‘T’. On 28 March 2022, Mr P attempted to send another payment to his fiancé for £500. This payment didn’t reach the fiancé’s account.

Mr P attempted three more payments to Russian accounts in April 2022 – two for his fiancé and one to a florist. They were returned to Mr P’s account by HSBC. All four payments incurred charges.

Unhappy with what had happened, Mr P complained. HSBC sent Mr P its final response and didn’t uphold his complaint. The key points HSBC made were:

- The 6 April 2022 payment for £142 has been held for additional security checks. As requested by Mr P, this will be cancelled and returned to his account
- The 28 March 2022 payment of £500 is being held by the intermediary bank for enhanced verification checks. HSBC has requested for this payment to be returned to Mr P
- Two payments made on 4 and 20 April 2022 respectively, have both been rejected and returned to Mr P’s account. This was because the beneficiary bank is subject to sanctions. Russia is subject to enhanced due diligence

As the £500 had not been refunded, and as the returned payments still incurred charges, Mr P referred his complaint to this service. One of our Investigator’s then looked into Mr P’s complaint. In summary, they found:

The £500 payment

- They’re unable to ask HSBC to do anything further regarding the withheld funds. HSBC informed this service the funds have been blocked due to sanctions implemented on Russia. HSBC confirmed the funds aren’t being held by it, but an intermediary bank acting on behalf of the beneficiary bank
- HSBC confirmed the payment was sent to Mr P’s fiancé’s bank, T, via another Russian bank (“S”) and that was via a US bank who were acting as intermediaries for S. I’ll refer to the US bank as ‘N’ going ahead

- Mr P says he was told the £500 payment was being held in a suspense account by one of HSBC's employees on a telephone conversation. HSBC has been unable to locate any calls, but it's provided its internal call notes. The call notes don't indicate Mr P was told the funds were being held in a HSBC suspense account
- HSBC say that because of the involvement of the Office of Foreign Assets Control (OFAC), it can't take any further action regarding the missing funds. But it did advise Mr P he could submit an OFAC licence application for the release of the £500. Based on this, Mr P has since submitted his application
- HSBC hasn't made any error regarding the £500 payment. It was complying with its legal and regulatory obligations
- HSBC has confirmed the payment was sent before sanctions were imposed on S – who were involved in the journey of the payment. Sanctions were implemented against S on 30 May 2022, whilst the payment was being sent to Mr P's fiancé. And it was frozen by OFAC. HSBC had no control over this
- Based on the information provided, our Investigator was satisfied HSBC followed Mr P's instructions and recalled the payment and sent multiple chasers to try and retrieve it. It's a serious offence to breach sanctions by processing a payment, including returning it. HSBC wouldn't be able to accept the funds without the appropriate licence and/or consent from OFAC
- As HSBC hasn't made an error, they won't be asking it to make an award of compensation

Fee's incurred

- HSBC has provided a step-by-step diagram showing a customer's journey when completing an online instruction to send an international payment. This shows there's a drop-down option which allows a customer to choose whether to pay the £5 fee, or whether the beneficiary pays it
- These charges were applied in line with HSBC's terms and conditions. Mr P would've known there was a risk in sending payments to Russia given the conflict that had arisen
- HSBC doesn't have control over the payments being rejected and reverted, so it wouldn't be reasonable to hold HSBC liable for any financial loss Mr P incurred through the fees that were charged
- But HSBC has agreed to refund all charges applied on payments that weren't successful – totalling £15. This is a reasonable outcome given the unfortunate circumstances Mr P has found himself in

Mr P didn't agree with what our Investigator said. I'd like to assure Mr P that I've carefully reviewed everything he's said – even if I don't explicitly set all his points out here. Some of the key points he makes are:

- The intermediary, S, were sanctioned in May 2022 - this is after the date of the transaction in March 2022

- HSBC is more than capable of executing the transaction without the need of intermediaries. And if it had to use one, it should've found one that wasn't sanctioned
- HSBC holds vicarious liability for all its employees and its subcontractors which includes intermediaries
- HSBC guarantee a transaction, so it should either perform it or refund it. Liability sits with those with whom an agreement exists. HSBC has failed to use an intermediary that will do as its asked and has therefore failed its due diligence. Mr P cannot be held liable for that, but HSBC should
- HSBC should refund Mr P the money after which it can take action to receive the funds for itself

In response to Mr P's point about the payment being sent before sanctions were implemented against S, our Investigator said:

- The Russia and Ukraine conflict was a well-known issue at the time, so most banks and financial institutions were already putting measures in place. If it's part of a bank's business model to take steps as soon as there is mention of a forthcoming emergency, then we would consider it was acting reasonably in taking proactive steps to protect itself
- As neither HSBC nor its intermediary are holding the funds, they cannot be held liable for who the beneficiary bank chooses to use as its intermediary

Mr P didn't agree. In short, he says its black or white as to when sanctions apply. And that HSBC is responsible for the funds and the entire route it chose to send them through.

As Mr and Ms P didn't agree, their complaint has now 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.

Having done so, I've decided to not uphold this complaint. I know Mr and Ms P feel strongly about their complaint, and I don't undervalue how challenging the circumstances they've found themselves in has impacted them. So, I'll explain why.

I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything Mr P and HSBC have said before reaching my decision. It's important to note, my decision focuses on HSBC's actions regarding Mr P's payment instructions and the fees it charged him.

The £500 payment

HSBC has important legal and regulatory obligations it must meet when processing payment

instructions for its customers, which includes ensuring no UK or other international sanctions might be breached. Those obligations are overriding in terms of otherwise meeting general timeframes for processing payments. And this is the same for every bank. This does mean that sometimes payment instructions are justifiably declined or withheld.

The crux of this complaint relates to whether HSBC are responsible for the payment being withheld in the way it has. HSBC say it sent Mr P's £500 payment to its US entity – HSBC America. And from there it was sent to Mr P's fiancé's account – the beneficiary account.

The fiancé's bank, T, use bank S to receive the payment. But before it's sent to S, it must go through bank N. Bank N are a US bank. Based on the information I've seen I'm satisfied that this process of sending funds are T's arrangements. So, it follows that I'm satisfied HSBC did what they were expected to do in sending the payment.

Mr P argues that bank S was only sanctioned in May 2022, well after he had sent the payment in March 2022. Because of this he questions why it's been withheld in the way it has. Mr P is aware that the sanctions that were applied related to a US jurisdiction, and because of this he has applied for a licence from OFAC.

OFAC is department of the US Treasury. On its website it says it “*administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes....*”.

Bank T used the Russian bank S, and then N – a US bank – as part of its banking arrangements to receive a payment from HSBC. According to OFAC and the US Treasury's website its sanctions against bank S went live on 26 March 2022. That's a couple of days before Mr P sent the payment. Because of this I can see why Mr P's payment was withheld by the intermediary bank T were using to receive the payment.

Mr P says HSBC should be liable for using the intermediaries it did. But I don't agree with this. HSBC sent the payment to T. And I'm satisfied the issue is with the network of banks T employed to receive the payment. International sanctions are often complex. And international payments can often involve a handful of financial institutions - as is the case here. HSBC told Mr P he could apply for a licence from OFAC to help get his payment returned. I don't think it could have done anymore.

I would of course expect HSBC to do what it can to help Mr P retrieve his funds. From the technical information it's sent from its internal international payment and messaging system, I'm satisfied HSBC asked for the return of the payment - and chased this up regularly. So I don't think its failed or made any error here.

Mr P may argue that HSBC shouldn't have sent the payment to its US entity thereby avoiding any US sanctions. But HSBC has its own processes for sending payments internationally, and I haven't seen anything to show that it hasn't done what it would ordinarily do here.

Mr P says he was told by one of HSBC's employees on a telephone call that it was holding the £500 payment in one of its suspense accounts. Unfortunately HSBC don't have the call recording. But it has given me its internal notes. Having carefully reviewed these, I can't see Mr P was told this. It's possible Mr P was told this, but based on the limited information I have, I can't make a finding on this point.

The other returned payments

Mr P's subsequent payments were made in April 2022 and were returned to his account.

At the time of the payment instructions there was significant activity relating to Russian sanctions being imposed. And not just in the UK, but on an international level. At the time, these sanctions were changing daily, and at times, on an hourly basis.

If HSBC failed to implement sanctions it could've faced serious repercussions. So I can see why HSBC may have taken proactive steps to not send payments to a Russian bank. It would also have been informed by what happened with Mr P's March payment being withheld in the way it was. And that it would be likely the same thing could happen again with a similar payment instruction.

So, taking this all into account, I'm satisfied by taking the approach it did, HSBC acted reasonably in the circumstances. I also note the beneficiary bank in Russia for Mr P's fiancé has been subject to previous sanctions being imposed against it by the UK government. So I think it's likely to have made the situation even more complex.

Overall, given I don't think HSBC has done anything improper in relation to all four payment instructions, I see no basis to award compensation for any distress and inconvenience this may have caused Mr and Ms P.

Fees charged

HSBC charged Mr P a £5 fee on each of the payments in line with its terms and processes. Mr P would've agreed to these when completing the online process to initiate the payments. HSBC say it is within its rights to charge these fees especially as Mr P agreed to them. But it would be happy to refund the fees for the three payments that were returned to Mr P. I don't think HSBC need to do anymore.

My final decision

For the reasons above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Ms P to accept or reject my decision before 5 January 2024.

Ketan Nagla
Ombudsman