

The complaint

A company I'll call F complains that HSBC UK Bank PLC (HSBC) blocked its account and refused to release the funds held in the account.

F is represented by its director, Mr S.

What happened

On 25 June 2021, Mr S incorporated F as a limited company. F then opened a business current account with HSBC on 2 July 2021, and entered into a supply contract with a third party I'll call S on 5 July 2021.

F received a payment of £70,000 into its account from S on 20 September 2021, followed by a payment of £23,731.40 four days later. HSBC then blocked F's account in order to carry out a review.

Mr S contacted HSBC to find out what was going on, but HSBC wouldn't tell him what it was doing, so he complained. HSBC issued its final response on 13 October 2021. It said it had placed the block on F's account while it complied with its UK statutory obligations and that it wasn't able to provide a timescale on the process.

Mr S didn't accept HSBC's response, so he brought F's complaint to our service. HSBC later contacted Mr S to discuss the payments F had received and to ask questions to determine F's entitlement to the funds. It considered the information Mr S had provided, but ultimately didn't change its position, so the block remained and HSBC retained the account balance.

After a lengthy investigation, our investigator thought HSBC should release the funds to F, pay F interest to compensate F for the time it had been deprived of the funds, and decide whether or not it wanted to continue to bank with F. By that time, a further payment of £85,000 had gone into F's account from S and the total account balance stood at £182,804.12.

Mr S accepted our investigator's outcome, but HSBC didn't. It maintained it was entitled to hold onto the funds in F's account and that it was doing so in compliance with its legal and regulatory obligations. It then completed its review and determined it could release £4,072.72 to F, which it did on 12 January 2023, at which point it also closed F's account.

Because HSBC didn't accept our investigator's findings, the complaint came to me to issue a final decision.

On 8 December 2023, I issued a provisional decision. In it, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Firstly, I should say that I'm aware I've summarised the events of this complaint in far less detail than the parties, and that I've done so using my own words. The reason for this is that I've focussed on what I think are the key issues here, which our rules allow me to do.

This approach simply reflects the informal nature of our service as a free alternative to the courts. And 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 in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything both Mr S and HSBC have said, before reaching my decision.

I'm sorry to disappoint Mr S, but I'm not persuaded HSBC has treated F unfairly.

I'll start by setting out some context for the review of F's account. UK banking regulations and legislation place extensive obligations on regulated financial businesses to have suitable systems in place for transaction monitoring. And there are times when a financial institution will need to block a customer's account in order to carry out a review of the account activity and of the institution's relationship with its customer.

In order to meet these requirements, HSBC is required to have measures in place to review payments that pass through its customers' accounts. As part of its review process, HSBC is entitled to ask a customer for more information about how they use their account. And it's not for this service to interfere with the bank's processes. Our role is to see if the bank has made any mistakes and then put the customer back in the position they'd have been in if the mistake hadn't happened.

HSBC told Mr S it was complying with its legal and regulatory obligations when he complained and, having reviewed the information and evidence it has provided our service, I'm satisfied it was entitled to block F's account and to carry out the review.

I can see that HSBC contacted Mr S to ask for more details of the payments and about his business. And I've seen the replies Mr S gave to HSBC's enquiries.

It is not our service's duty to assess whether or not what Mr S has submitted is sufficient. That is for HSBC to determine, in line with its legal and regulatory obligations and in line with its own procedures. Our service's role is to determine whether or not HSBC has acted reasonably in assessing the evidence Mr S has supplied. HSBC has explained to our service why it isn't satisfied with the evidence Mr S has provided, and I'm satisfied with its explanation, taking into account all of the evidence it has shown our service relating to the full history of this case.

I haven't detailed HSBC's full reasoning in this decision because it isn't obliged to disclose the reasons for its actions to Mr S. And I see no reason why I would compel it to do so in this particular case.

However, what I can say is that I'm satisfied that HSBC has fairly assessed the information Mr S has provided, and so I won't be asking it to release the funds to him, based on the information and evidence he has provided to date.

With all of that being said, I do think there have been some avoidable delays in this process. Having reviewed HSBC's timeline, there are long gaps between action points that I don't consider it has justified in its correspondence with our investigator. So, I've thought about the impact that will have had on F to determine what, if any, compensation HSBC should pay.

Given I'm satisfied HSBC is within its rights to withhold the three large payments F received into its account, I won't ask HSBC to compensate F for any delays relating to those funds.

Even if HSBC had completed its review without delay, the result would be the same in that F would still not have access to those funds. So, F wasn't deprived of those funds because of an error by HSBC and so I see no basis on which I might reasonably award F compensation relating to the three large payments.

However, the same rationale does not apply to the £4,072.72 HSBC eventually released to F. As far as I can see, the primary focus of HSBC's investigation into F's account activity related to the three large payments it is still withholding. And I haven't seen anything to suggest it had similar concerns regarding the funds it ultimately released.

That's not to say that HSBC wasn't entitled to withhold those funds for a period, and I repeat that HSBC is entitled to keep an account blocked while it carries out a review of the account. And assessing when HSBC ought reasonably to have released the funds is difficult in the circumstances of this complaint.

I'm satisfied HSBC needed to review the account, and I can see that some of the steps will have taken a reasonable amount of time. But I haven't seen justification of the 18 months it took to release F's funds, and I do consider there were lengthy avoidable delays during that time. So, having looked at all of the information HSBC has provided our service, I think it could have released the £4,072.72 two months after it issued its final response to F (i.e. 13 December 2021). And I think that would have given HSBC a reasonable time to review and process those funds.

As to the what compensation HSBC should pay, if any, I've looked at everything Mr S has told our service, and I've thought about the impact this had on F.

Mr F has set out some details of what he claims to have lost as a result of HSBC's actions, but he hasn't provided sufficient detail or supporting evidence to demonstrate those losses. For example, at various points Mr S has claimed he owes money to his employees and contractors. And the number of employees/contractors Mr S has disclosed has ranged from 1 to 120.

I have seen lists of employees produced by Mr S, but those lists don't make the picture any clearer as their numbers don't tie in with the numbers Mr S has told our service about, and many of the staff listed relate to work undertaken before F entered into a contract with S, before it opened an account with HSBC, and before F had been incorporated (i.e. at a time when F did not exist).

Mr S called our service in January 2022 to say he was being threatened with legal action because he hadn't paid F's subcontractors (who at that point he said numbered 120), but he later confirmed that no court claims had been forthcoming.

Mr S contacted our service again on 27 June 2022 to say F had gone from 17 employees down to 1, who he was paying from his own personal savings. But he didn't submit any evidence to support his claims, save for a debt collection letter stating F owed the sum of £74.54 in PAYE tax.

Further, our service would usually expect to see a business take steps to mitigate its losses in circumstances such as this, and to continue trading by any reasonable means necessary. But I haven't seen evidence of any attempts to secure alternative funding or any other steps taken to keep the business running. And I note that F has never filed accounts at Companies House, save for accounts for a dormant company on 24 April 2023.

For the reasons I've set out above, I haven't seen credible evidence of any consequential losses F suffered as a result of being deprived of the £4,072.72 from between 13 December

2021 and 12 January 2022. But that doesn't mean F won't have suffered some losses, and I think it's self-explanatory that being deprived of £4,000 will cause a business to suffer some kind of financial loss.

With that in mind, and in the absence of further evidence, I'm minded to award F simple interest at the rate of 8% on the balance of £4,072.72 from 13 December 2021 (being the date I think HSBC could have released those funds) until 12 January 2022 (being the date it did release the funds). To be clear, that award relates to any losses F will have suffered as a result of being deprived of those funds, and is not a penalty award as HSBC suggested in its response to our investigator's findings.

It is well known that our service has the power to award compensation for distress and inconvenience caused by a banking error, and I have of course given consideration to such an award in this case. However, having done so, I'm not persuaded it would be appropriate to make such an award. I'll explain why.

Firstly, because F and not Mr S is HSBC's customer, I can't make an award for any distress Mr S experienced personally. And because a limited company cannot feel distress, I can only make an award for any inconvenience I think F has suffered, as well as any financial losses it has incurred as a result of HSBC delaying release of the £4,072.72.

On the face of it, I accept that a limited company will experience inconvenience when a bank blocks its account. However, in this case I take the view that the overwhelming majority of any such inconvenience would have been caused by HSBC's decision to withhold the £178,731.40, which I have already said I consider was justified.

And I haven't seen satisfactory evidence of business activity that I think was inconvenienced by the delay in releasing the £4,000. So, I don't think it's appropriate to make an award for inconvenience to F.

I should say that I'm open to persuasion from both parties in response to my provisional findings. HSBC has the opportunity to explain why it took so long to release F's funds and I invite it to set out its reasoning in full detail if it thinks a longer period was justified.

And Mr S now has the opportunity to submit any further evidence to demonstrate F's entitlement to the withheld funds, as well as evidence of any losses it has suffered as a result of HSBC's actions. All I will say is that I won't consider any losses suffered as a result of HSBC's decision to withhold the £178,731.40, unless Mr S can also produce evidence that reasonably persuades HSBC to release the same, and that it should have done so sooner."

I asked both parties to provide any further evidence or submissions they wished me to consider. HSBC accepted my decision, but noted that it released F's funds on 2 February 2023, not 12 January 2022. It agreed to pay the additional interest up to 2 February 2023.

Mr S did not accept my provisional findings. He submitted further documents that he said explained F's position, which I sent to HSBC to consider if the same changed its position. HSBC reviewed the documents but didn't change its position. It explained why it wasn't prepared to release F's funds and detailed the extent of its review.

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 considered whether HSBC acted fairly in reviewing the new documents F submitted, and I'm satisfied that it did. It's explained its reasoning to our service, which ties in with the reasoning it has set out to our service previously. HSBC isn't obliged to disclose its reasons to F and I don't intend to compel it to do so.

Ultimately, having assessed HSBC's actions in blocking and retaining the funds in F's account, I'm not persuaded it treated F unfairly, and I won't tell it to release the funds to F. The information F provided after I issued my provisional findings doesn't change my outcome, for the reasons I've set out. And so it follows that my provisional findings stand, subject to the correction of the date F's funds were released.

My final decision

My final decision is that HSBC UK Bank PLC must pay F simple interest at the rate of 8% on the sum of £4,072.72 from 13 December 2021 to 2 February 2023.

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

Alex Brooke-Smith
Ombudsman