

The complaint

This complaint is brought by a company which I will refer to as 'F'.

F's complaint, in summary, is that HSBC UK Bank Plc failed to prevent a loss to them when they fell victim to an authorised push payment scam. F further says that HSBC did very little to assist them after the bank was advised of the scam.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in late 2021, F was in discussion with a company based abroad for supply of certain goods. In November 2021 they paid this company about \$123,000 which they thought was advance payment for the goods to be supplied. Unfortunately, it later transpired that it was all a scam. F reported this to their bank HSBC who in turn contacted the recipient bank but were advised that no funds remained on the account.

One of our investigators reviewed the complaint and concluded that it couldn't be upheld. They said, in summary:

- The relevant payment was significantly higher than normal payments out of F's account and so it ought to have been flagged by the bank as suspicious.
- However, even if the bank had intervened, it is likely the payment would still have gone through. This is because the scammer had gone to great lengths to persuade F that they were dealing with a genuine party. So, it is most likely that F would have confirmed to HSBC, had they intervened and queried the payment, that the payment was genuine and allowed the bank to release the payment.

F did not agree. Through their representative, they said that had the bank intervened and asked all the right questions, that would have prompted F to carry out further investigations and the scam would have come to light.

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.

It is clear that F has unfortunately fallen victim to a sophisticated scam. They have provided detailed submissions to support their complaint, which I have read and considered in their entirety. However, I trust that they will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in less detail, as a discourtesy. The purpose of my decision is not to address every point raised in detail, but to set out my conclusions and reasons for reaching them.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed F's account statements from January 2021 to understand the general account activity. Over the period, I see that this was an active account with several large payments, typically averaging \$15,000. There have been regular higher payments too, ranging from about \$30,000 to \$90,000. For example, I see that few weeks before the disputed payment, F made a payment of about \$80,000.

The disputed payment was higher in value when compared to other payments made during this period. However, occasional higher payments could happen on an account. It was a foreign payment. However, this was a dollar account, so presumably intended to help payments abroad. And from what I can see, F have made payments from it abroad. So, the fact that this was a foreign payment wouldn't in itself had been a cause for concern.

Further, I see that the account usually tends to have a low balance. It seems that typically, prior to making big payments out the account, adequate funds were transferred in and the payment was then made leaving the account in low balance again. That is what happened on this occasion too.

Ultimately, it is a matter for HSBC as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case HSBC could have fairly and reasonably done more.

After taking all of the above into account, I can't say that the disputed payment stood out sufficiently from the prior account activity to reasonably have prompted HSBC to take further action. I'm not persuaded that there is enough here for me to find HSBC at fault for carrying out F's payment instruction in line with its primary obligation to do so.

Nevertheless, even if I conclude that HSBC ought to have intervened given the amount involved, I agree with the Investigator the payment would still likely have gone through.

Without the benefit of hindsight, it is difficult to know exactly what would have happened had HSBC intervened. So, I have considered what more likely have happened.

As the Investigator explained, HSBC's objective here would have been to check that F were aware who they were paying to and that they were satisfied they did necessary checks to verify the legitimacy of the company they were sending the funds to.

It seems to me that by the time F made the payment, they were satisfied that they were dealing with a legitimate company. As I understand it, the scammer contacted F via email soliciting business. F carried out due diligence on the company and were satisfied they were genuine. They then continued to have conversation with the scammer via email and later via WhatsApp. There were several exchanges between the parties (and this went on for nearly two months before the payment), and I see that the scammer was able to satisfactorily answer F's queries about the goods to be bought. And on the face of it the documents they sent appeared to be genuine. There were some spelling errors in one of the documents, but

the scammer had previously made it known to F that they weren't good at English. So, this might not have been a cause for concern.

Further, F's representative has said that because F was unable to visit the 'supplier' in person, they exchanged images and videos to assure that they were genuine. And as part of the checks, F says they called the genuine company using the number provided on the website and confirmed that they did have a staff by the same name as the person who was corresponding with F.

I consider that through all of this F was convinced that they were dealing with a genuine company.

F says had HSBC intervened and advised them to call the intended payee and confirm the payment details they would have done so, and the fraud would have come to light.

As noted earlier, F says that they called the genuine company using a number on their website. However, it appears that there was also a fake website of the scammer. When the Investigator questioned F to ascertain which one of the websites F relied on to call the company and asked for a link to both websites to be sent, F said that they were not 'currently aware of the web address'. So, it is difficult for me to know for certain which number F would have called had HSBC advised them to do so, and what the outcome would have been.

Nevertheless, I am of the view that had HSBC intervened and questioned F about the payment, F would have most likely confirmed that they were making payment to a genuine company and explained their interactions with the payee (as noted earlier). I consider that would have been sufficient for HSBC to release the payment.

F also says that HSBC did very little to assist them after the bank was advised of the scam. I see from the available submission that after F reported the scam to the bank, there was a slight delay on its part to contact the recipient's bank (based abroad). But I agree with the Investigator the delay would unlikely have made a difference. This is because by the time F reported the fraud to the bank four weeks had passed. It is usually the case that the fraudsters move funds away from the receiving account quickly. So, it is most likely the funds would have been dispersed from the recipient's account well before F discovered and reported the scam to the bank. Further, I can see that HSBC sent regular chasers to the recipient's bank before being told by that bank that no funds remained. Overall, I am unable to conclude that the bank failed to assist F on being advised of the fraud.

I know this will come as a disappointment to F. I am aware that they are strongly of the opinion that their bank let them down on this occasion. But I can only make an award against a bank if that bank has done something wrong which has led to a loss. In this case, for the reasons given I am not persuaded that there was any error or omission on part of HSBC which has resulted in F's loss. And as such I can't fairly or reasonably ask it to refund their loss.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 1 September 2023.

Raj Varadarajan
Ombudsman