

The complaint

Mr F complains that HSBC UK Bank Plc didn't do enough to prevent the loss he suffered when he sent money to one of their customers as the result of a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In 2021 Mr F was sadly the victim of a scam. He sent £15,000 from his account with his own bank 'S' to an account held with HSBC.

At the time Mr F believed he was making a legitimate investment into a fixed term bond, but he later learned he'd been scammed. In January 2022 Mr F complained to HSBC. He didn't think they'd done enough to prevent his loss.

HSBC responded and said that Mr F should raise this through S and gave referral rights to our service. Being unhappy with this response, Mr F referred his complaint to us. One of our Investigators didn't recommend it should be upheld. In summary she didn't think there were any failures by HSBC which caused or contributed to Mr F's loss.

Mr F disagrees and has asked for an Ombudsman to review his complaint.

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 can see Mr F feels strongly that HSBC should refund his loss and feels it's unfair that the bank is unwilling to do so. But I want to be clear that unwittingly falling victim to a scam doesn't entitle the victim (here Mr F) to a refund from the bank that received their money. In these circumstances I could only direct HSBC to reimburse Mr F for his loss if I'm satisfied they did something wrong where it would be fair and reasonable to ask them to provide a refund.

When considering complaints of this nature, I can understand why, with the benefit of hindsight, it's sometimes easy to say the recipient bank ought to have identified the activity on the account as fraud and should've done more to prevent the loss, or they could've done more to assist in the recovery of the funds upon receipt of notification of fraud. However, I must be clear, when deciding this complaint, I need to think about what HSBC knew at the time – not what is known today. And where it is supposed (as is the case here) that HSBC didn't do enough. My role is to look into the individual circumstances of the case and decide (within my jurisdiction to consider this complaint), based on what I have seen, whether they should have fairly and reasonably done more.

With the above in mind, I'm satisfied HSBC carried out appropriate checks to verify the identity of the recipient accountholder (in line with its regulatory obligations) when opening the account. So, it follows that I don't think there is any reason, based on the opening of the account, to ask HSBC to do more here.

I've reviewed the account statements prior to Mr F's payment arriving and have also considered whether there was anything, prior to Mr F's notification that ought to have alerted HSBC to the possibility of fraud. I'm satisfied none of the account activity ought to have stood out to HSBC as unusual or suspicious such that they ought to have done more. So, I don't think there have been any failings by HSBC regarding the monitoring of the recipient account, so I can't say it missed an opportunity to prevent Mr F's loss in this way either.

I'm also satisfied that HSBC responded appropriately when they received notification of fraud from Mr F. It is standard industry practice for claims to be made by the sending bank on behalf of their customer. This is in part to mitigate the risk of malicious claims (which is not something I'm suggesting has happened here). So, I can't say HSBC were wrong to refer Mr F back to S in the first instance.

Mr F has also said that HSBC didn't properly investigate his complaint when he made it. Pointing out that our service's jurisdiction allows complaints about receiving banks and that we generally expect people to complain to the business first, before they can come to us. I've considered this but it doesn't impact the outcome of this complaint. Nothing HSBC could have done at that point would have impacted whether a recovery could have been made. And HSBC's complaint response gave referral rights to our service (which Mr F duly made use of) as he remained unhappy.

Unfortunately, however, by the time HSBC had been told that Mr F's payment had been made as a result of a scam, Mr F's funds had already left the recipient account (in fact these were spent very soon after arriving). So, I don't think there were any failings that prevented Mr F recovering his money.

Mr F also says that he believes the account he paid was in the name of a business. And that on companies house it shows that this businesses sole director had resigned in December 2020, before Mr F made his payment to the account. He believes there was therefore no-one with the appropriate authority to instruct payments from the account. He says the implication of this is that the payments made during this time (which includes the spending of his funds) were unauthorised and should therefore be credited back to the account by HSBC. And they would then be available for recovery.

I understand the argument Mr F is making, but I don't agree. A claim of unauthorised payments is one for the accountholder to make. As far as HSBC are concerned, if the payments were instructed and correctly authenticated, they have no reason to believe it was anyone other than someone authorised to make payments on behalf of a limited company. And I've not seen evidence to support that HSBC have received a report of unauthorised payments from their customer. There is no requirement for payments from a limited company's account to be authorised by a director. It's possible for there to be multiple persons with such authority in relation to a business account. As such, I'm not persuaded that the outgoing payments were unauthorised or that this is a reasonable basis upon which I can direct that HSBC need to do more.

Overall, I'm sorry to hear Mr F lost so much money to a scam. And if he hasn't already done so he could consider speaking to his own bank about this matter. But as I don't think (within the scope of my jurisdiction) that HSBC did anything that caused the loss or hindered its recovery, I'm not going to tell them to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 August 2023.

Richard Annandale
Ombudsman