

The complaint

Ms C complains that HSBC UK Bank Plc (HSBC) won't refund money she lost in a scam.

What happened

What Ms C says:

Ms C opened a Global Money Account (GMA) with HSBC in December 2022. On 17 December 2022, she made an international payment of CHF2,400 for the rental of an apartment in Switzerland. The agent then said the apartment wasn't available, by which time Ms C had paid the money. The payment was:

Date	Payment type	Amount
17 December 2022	International payment	CHF2,400 (£2,156)

The Swiss rental company offered Ms C an alternative apartment, but it wasn't available on the dates she wanted it for, or in the same location. Ms C asked for a refund, but nothing was paid back. The beneficiary wouldn't respond to her messages. She said she had been scammed and reported the issue to HSBC on 25 January 2023. She said HSBC had a duty to protect her and should refund the money.

What HSBC said:

HSBC said they tried to contact the beneficiary bank, but it failed to respond. HSBC said there wasn't any more they could do. They apologised for some poor service Ms C got on the phone (she was transferred to different departments several times) and for that, paid compensation of £30.

Our investigation so far:

Ms C brought her complaint to us. Our investigator said the payment was too low in value to expect HSBC to have intervened and stopped it. HSBC had tried to recover the money, but without any success.

Ms C didn't agree. She said HSBC should've protected her, even though it was an international payment; she hadn't heard from HSBC about the recovery attempts; and the payment was out of character with the way in which she used her account. She asked that an ombudsman look at her 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.

As a first step, I need to decide whether this was a scam (where a scammer takes money from a customer with no intention of providing any services or returning the money to them) or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

In all honesty – it's not clear whether this was a scam, or simply a civil dispute whereby the rental firm didn't provide the apartment that Ms C wanted. In this case, I'm persuaded that on balance, it was a scam – as the firm didn't respond to refund requests and wouldn't reply to her WhatsApp messages. So – I will look at Ms C's complaint as a scam.

It's not in question that Ms C authorised and consented to the payments in this case. So although she didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – and in this case, the payments were made to an overseas account.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Ms C when she made the payment, or whether it should have done more than it did. I have considered the position carefully.

In this case, I don't consider HSBC acted unfairly or unreasonably in allowing the payments to be made. I say that – as it was for a low value, and we wouldn't have expected HSBC to have questioned it for that reason. I thought about whether HSBC should've intervened because Ms C's GMA account had only been opened for a few days before the payment – but I'm not persuaded that meant HSBC should have stopped it here.

And - there's a balance to be struck: HSBC has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think HSBC acted reasonably in processing the payment.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I can see that HSBC messaged the recipient bank on 26 January 2023 – the day after Ms C contacted them – so that is what we would expect HSBC to have done. They didn't get a response – and on 23 February 2023, HSBC recorded that they called Ms C and advised her that there had been no response from the recipient bank and that no more could be done.

Unfortunately, it's the case that where an overseas bank is involved, the chances of recovery are lower than for a UK bank - that is generally the case in scams such as this.

I'm sorry that Ms C has lost money – but in summary, we wouldn't expect HSBC to have intervened in a payment for such a value.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 5 December 2023.

Martin Lord
Ombudsman