

## **The complaint**

D, a limited company, complains that HSBC UK Bank Plc hasn't refunded the losses it incurred when it was the victim of an invoice interception scam.

## **What happened**

D holds a business account with HSBC. In October 2021, D received a request for payment of invoices which appeared to have come from one of D's established suppliers.

The email correspondence was part of a chain of prior emails. It asked D to make remittance for invoices using new bank account details. When D's accountant attempted to add the new payment details to their HSBC account, an error message resulted. D emailed the supplier back to confirm the details, then sent the payment.

Four payments were made to the specified account, on 18 October and 5 November. These payments apparently were made between sterling denominated accounts but were sent using the SWIFT payment mechanism in Euros. In total this amounted to £41,198.76.

D subsequently received an email from the genuine supplier asking for payment at which point it came to light that the earlier emails hadn't been legitimate.

D reported the scam to HSBC. HSBC attempted to recover the funds that D had lost, but only a nominal sum remained to be recovered. It didn't refund D, explaining that D had authorised these payments and HSBC had carried out D's instructions. These payments hadn't been particularly unusual or suspicious compared to D's usual account activity. HSBC was not liable for the loss due to the scam. D didn't accept this outcome.

Our Investigator reviewed what had happened. She explained that the payments weren't within the scope of the Lending Standard Board's Contingent Reimbursement Model Code (CRM Code) because that didn't apply to SWIFT transfer payments.

However, the Investigator thought HSBC ought to have identified that the first payment was significantly out of character and unusual for D. On that basis HSBC ought to have intervened prior to processing the payment instruction, and had it done so should have prompted D to take steps to verify the payment through another channel – thereby preventing the scam and resultant losses.

HSBC didn't agree, arguing in response that the payment was not one requiring it to have taken these steps. As a result, the matter was referred to me to review everything afresh and reach a final decision.

I issued my provisional findings on the merits of D's complaint on 15 November 2023. In my provisional findings, I explained why I didn't intend to uphold D's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*In deciding what's fair and reasonable in all the circumstances of a complaint, I'm*

*required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the time.*

*Upon reading all the available evidence and arguments, I have reached a provisional finding that the fair and reasonable outcome, in all the circumstances, is that HSBC is not liable to refund the losses D sustained through this scam. I will explain why.*

*Both sides accept that D was the victim of a scam and has lost a significant sum as a result. What needs to be determined here is whether HSBC should reasonably be held liable for the amount that was lost to the scam.*

*As a starting point in law, HSBC's primary obligation to carry out correctly authorised payment instructions given to it by its customers, and to do so without delay. D is therefore responsible for the payments it instructed HSBC to make for it.*

*However, that isn't the end of the story. As a matter of good industry practice, I'd expect HSBC to have been on the lookout for significantly unusual or out of character transactions that might be indicative of the risk of loss through fraud or scam.*

*Here HSBC says that the relevant transactions weren't significantly unusual for D. It therefore had no reason not to carry out its primary obligation to process the payment instructions it was given.*

*I've considered whether this was reasonable in the circumstances. I find it relevant that D's account was a business account. And I accept HSBC's point that the pattern of typical usage on a business account might typically be expected to differ from that of a consumer account.*

*Looking at the payment history here, I can see D had made several international transfer payments within the previous year. These ranged in value, with the largest (presumably legitimate) payment being for the sum of around £11,000. The fact that the scam payments were made as international payments wouldn't on the face of it have seemed unusual for D's account.*

*I don't consider that the first payment of £17,166.87 was significantly different to this amount. While the payment was larger than the prior international payments, I don't consider it was larger to an extent that ought to have caused HSBC particular concern – it was not a remarkable sum in the context of D's other account usage.*

*Of course, there is one aspect that was unusual. The start and end points of these payments were sterling denominated accounts and UK based. It would therefore be less usual for a payment between two such accounts to have been made using SWIFT rather than the Faster Payments system.*

*However, I don't consider that in itself that would be sufficient reason for HSBC to have refused the instructions. It's not clear that it would (or could) have known that the destination account would be sterling denominated. So, I can't fairly say the bank ought to have been concerned about this when the payment was being made using SWIFT.*

*The third payment was for a slightly larger sum, £22,198.90. However, for similar reasons as above, while this was larger than prior payments, I don't consider it was significantly larger to the extent that it should have concerned HSBC.*

*In summary then, I don't find the evidence here leads me to conclude that HSBC was at*

*fault for not blocking or delaying any of these payments and intervening before it would allow them to be made. There simply wasn't enough reason for HSBC to have taken that step.*

*When HSBC was made aware of the scam it attempted to recover the funds from the recipient bank, but little remained. It appears that the funds had largely been removed before the scam came to light.*

*I know this will not be the answer D wants me to give, but I don't find HSBC was at fault here. I therefore can't fairly hold it liable to refund D for the losses incurred through this scam. HSBC was obligated to carry out D's payment instructions and there wasn't sufficient reason for it to have done otherwise.*

*With that in mind, and based on what I've seen, I don't find HSBC is responsible for the losses D suffered here and it doesn't need to refund D.*

In my provisional decision, I asked both sides to provide any further arguments or information by 12 December 2023, after which point, I said I would issue my final decision on the matter.

### **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.

HSBC did not provide a substantive response to my provisional conclusions.

D responded to the provisional decision saying it didn't agree this was a fair outcome. In summary, D said:

- It thought the payments were enough out of character in terms of amount and being a new payee that HSBC should have carried out additional fraud checks. The highest foreign payment D had made in the prior six months was for around £11,000.
- This should have been identified by HSBC as both a sudden increase in spending and a payment to a new payee
- The payment being to another UK account but not in sterling should have also prompted concerns. HSBC would have definitely known the beneficiary account was a Sterling denominated account.
- Based on these factors the payment should have been flagged as potentially fraudulent and HSBC should have investigated further to prevent the fraud.

I have considered D's further representations. But I'm not persuaded that these change the outcome I reached or the reasons for that. While I appreciate that the referenced payment was larger than the earlier international transfer D had made, I don't consider the difference was sufficient to have prompted concern on HSBC's part – even allowing for this being the first payment to that beneficiary account.

In considering the actions of HSBC I need to take into account that the bank's primary obligation is to carry out payment instructions given by its customers and to do so without delay. That said, as a matter of good industry practice, I'd expect a bank such as HSBC to intervene, and thus delay the payment, where there is sufficient reason to believe the payment is likely to result in loss through fraud or scam. But any such expectation has to be balanced against the bank's primary obligation. The bank cannot unduly interfere with legitimate payment instructions (which of course, the vast majority of payment instructions will be). This is a difficult balance to strike. If a bank was to delay a payment instruction which turned out to have been wholly legitimate in nature, then its business customer incur

suffer a financial or reputational loss – and HSBC could risk a claim that it was in breach of mandate.

Based on the evidence available to me here, I don't find HSBC was at fault in relation to these payments.

The beneficiary account wasn't held by HSBC so it would not have known the details of that account – including whether it was denominated in Euros or in Sterling. The fact of a beneficiary account having a UK sort-code does not require that it is Sterling denominated. I have not seen any evidence HSBC would have known the account was a Sterling account, and I do not consider that was a factor HSBC could have taken into consideration.

In short, I do not find HSBC is liable to refund D for these payments, and I consider that outcome to be fair and reasonable in all the circumstances for the reasons I have set out.

### **My final decision**

For the reasons set out in my provisional decision and above, I do not uphold D's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 19 January 2024.

Stephen Dickie  
**Ombudsman**