

The complaint

Mr and Mrs B complain that HSBC UK Bank Plc won't refund the money they lost when they fell victim to an authorised push payment ('APP') scam involving the transfer of money to an account held at HSBC.

What's happened?

In summary, Mr and Mrs B say they fell victim to an investment scam in early 2021, and they were tricked into sending money from their own bank account to a fraudster's account held with HSBC.

Both Mr and Mrs B's bank and HSBC are signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM Code').

The CRM Code was implemented to reduce the occurrence of APP scams. It sets out what is expected of the 'Sending Firm' when payments are made which includes a consideration of whether a customer met their requisite level of care when making the payment. It also sets out the obligations for the 'Receiving Firm' to prevent, detect and respond to the receipt of funds from APP scams in order to prevent accounts from being opened, or used, to launder the proceeds of APP scams. Where there is a failing by either the Sending Firm or Receiving Firm, they may be required to reimburse the customer. The customer may be required to share some responsibility for the loss if it is determined that they also failed to meet their requisite level of care under the CRM Code.

Once notified of the fraud, HSBC restricted the recipient account. However, it said that no money remained in the account to recover.

I understand that Mr and Mrs B's bank have refunded half of their loss, and they would like HSBC to refund the remainder. They raise questions about how the recipient account was opened and used, and they allege that HSBC knew the receiving account had been used fraudulently before.

In its capacity as the Receiving Firm here, HSBC didn't think it was liable to reimburse the remaining losses Mr and Mrs B incurred. It said that:

- the receiving account was opened in accordance with account opening procedures.
- it was unaware that its customer was involved in fraudulent activity when Mr and Mrs B paid them.
- it took the appropriate actions upon being notified of the fraud.

Mr and Mrs B referred a complaint to this Service for an impartial review. One of our investigators looked into things and didn't recommend that HSBC needed to do anything further.

Mr and Mrs B asked for an ombudsman to review their 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.

First, to clarify, this decision focuses solely on the actions of HSBC – as the Receiving Firm of the account Mr and Mrs B made payments to.

I'm sorry to disappoint Mr and Mrs B but I'm not upholding their complaint about HSBC. I understand they've been the victims of a cruel scam, but I don't believe HSBC has acted unfairly or unreasonably. I'll explain why.

Amongst other things, regulated firms receiving payments, like HSBC, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with their legal and regulatory anti-money laundering and countering the financing of terrorism requirements.

Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example, through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

And, more generally, given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, I think firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice').

I'm satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

Also relevant in this case, as mentioned earlier, is the CRM Code that HSBC are a signatory of.

The relevant considerations for Receiving Firms under the CRM Code set out the following:

"CRM Code: Payment Journey – Receiving Firm

SF2 Receiving Firms should take reasonable steps to prevent accounts from being used to launder the proceeds of APP scams. This should include procedures to prevent, detect and respond to the receipt of funds from APP scams. Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

Prevention

SF2(1) Firms must take reasonable steps to prevent accounts being opened for criminal purposes.

Detection

SF2(3) Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds.

Response

SF2(4) Following notification of concerns about an account or funds at a receiving Firm, the receiving Firm should respond in accordance with the procedures set out in the Best Practice Standards."

In considering all of the above, and to determine whether HSBC met the standards required of it under the CRM Code, I've thought about whether HSBC opened the receiving account correctly, whether there was anything in the way the account was being used that ought to have caused HSBC some concern and finally; whether HSBC acted appropriately and in a timely manner once notified of fraud.

Mr and Mrs B should be aware that, whilst HSBC has provided our Service with information about the receiving account, it has done so in confidence. This is to allow us to discharge our investigatory functions. HSBC has provided that which is necessary for the determination of this complaint. Due to data protection laws, our Service can't share information about the beneficiary, the receiving account, or any investigation and action HSBC subsequently undertook with them. However, I would like to assure Mr and Mrs B that I have thoroughly reviewed and considered all the information provided in reaching my decision.

Prevention – the account opening process

To help decide whether or not a bank failed to prevent the loss of an APP victim when opening the beneficiary account, we would generally ask to see evidence that; it correctly followed its account opening procedures; carried out checks to verify the identity of the named account holder; and did its due diligence when opening the account.

However, our Service only has powers to consider complaints about Receiving Firms since 31 January 2019 – and we can't consider any acts or omissions carried out by a Receiving Firm that occurred before this date. That means if the account was opened before this date, I am unable to comment on or make a finding as to whether I consider a Firm may have failed in its obligations in any way.

In this case, the beneficiary account was opened prior to 2019, so I am unable to comment on or make a finding about the account opening process – as the act of HSBC opening the account happened prior to when our Service had the power to look into complaints about Receiving Firms. However, HSBC has still provided information about how the beneficiary account was opened and the supporting documentation it obtained at the time. Whilst I am unable to comment or make a finding here, for Mr and Mrs B's benefit, HSBC has said the account was opened in accordance with its procedures.

Detection – account activity

The primary duty of a bank is to follow their customer's instructions and make payments as directed in line with the mandate – which is usually set out in the terms and conditions of the account. The CRM Code sets out that Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. This ties in with long-standing regulatory and legal obligations Banks and Building Societies have to monitor their business relationships and be alert to other risks – such as fraud, which would include giving consideration to unusual and out of character transactions.

I've looked at the account history for the beneficiary account and I can't say there was any account activity that I think ought reasonably to have stood out to HSBC as suspicious or significantly outside of what might be expected for accounts of that type. I can see the account had been running for a considerable time, and that there was no notification of fraud

on the account prior to the payments Mr and Mrs B made. I'm satisfied there were no other red flags so that it could reasonably be argued that HSBC ought to have had sufficient grounds to suspect fraud.

From what I've seen, I'm satisfied that HSBC has demonstrated it has taken reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. I don't think HSBC ought reasonably to have had concerns where I would have expected it to intervene here, so I can't fairly say that it should have prevented Mr and Mrs B's loss.

Response to notification of fraud

The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of APP fraud and notify the Sending Firm if any funds remain for recovery. Here, once notified of the scam, I'm satisfied HSBC took the necessary actions required of it and did so in a timely manner. Unfortunately, none of Mr and Mrs B's funds remained in the beneficiary account to recover.

Taking the above into consideration, I'm satisfied that, following notification of APP fraud, HSBC responded in accordance with the procedures set out in the Best Practice Standards.

Overall, while Mr and Mrs B were the unfortunate victims of a scam, I'm satisfied that HSBC met the standards required of it under the CRM Code. I'm also satisfied that HSBC, as the Receiving Firm, couldn't have done more to prevent the loss of Mr and Mrs B's money, and that it responded appropriately once notified of fraud. So, it follows that I don't think HSBC is liable to reimburse Mr and Mrs B for their remaining loss under the CRM Code or otherwise.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 21 December 2023.

Kyley Hanson
Ombudsman