

The complaint

Miss L has complained HSBC UK Bank Plc won't refund money she lost from her account as a result of a scam.

What happened

Miss L fell victim to a safe account scam. After her details were compromised via a phishing text, Miss L was contacted by individuals claiming to be from HSBC's fraud department.

Miss L says she was told that her accounts were at risk and that she needed to move her money into a "safe account". Miss L says she was told to open a new account with another bank, "R", and to move her money into that account before sending it on again to the safe account. Unfortunately, and unknown to her at the time, Miss L was actually speaking with fraudsters.

Believing that she was genuinely dealing with legitimate banking institutions, Miss L ended up making three payments from HSBC to her account with R. The last of these payments was stopped by HSBC as it was deemed to be potentially suspicious. But by this stage Miss L had already transferred most of the first two payments out of her account with R and on to the scammers. In total, Miss L lost £5,400.

Miss L realised she had been the victim of a scam shortly after ending her conversation with the scammers, and reported the matter to HSBC to see if it could help. HSBC logged the fraud, but told Miss L she would need to contact R to see if it could recover her money. Miss L raised a complaint about what had happened with HSBC. Specifically, she asked for clarification of why only the third scam payment was deemed suspicious.

When HSBC responded to Miss L's complaint it reiterated that Miss L would need to speak to R as it would be unable to reimburse her for the money or to recover her lost funds. It did though pay her £50 for poor service she'd received in the complaint process. Miss L remained unhappy with HSBC's response, and referred her complaint to our service.

One of our investigators looked into what had happened, but they felt that HSBC had intervened at the appropriate time, and did not think it was reasonable to ask HSBC to refund any of Miss L's loss.

Miss L remained unhappy, so her complaint has been passed to me for a decision.

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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

It's not disputed that Miss L authorised the payments that are in dispute here. And HSBC has an obligation to follow Miss L's instructions. So as per the Payment Service Regulations

2017 (which are the relevant regulations in place here) that means Miss L is responsible for the payments she made. That remains the case even though Miss L was the unfortunate victim of a scam.

Because of this, Miss L is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Miss L, or whether it should have done more than it did.

HSBC has confirmed it has mechanisms in place to check for unusual or potentially suspicious transactions. I appreciate that Miss L would like to know exactly why the third payments she made triggered HSBC's systems, but the earlier payments did not. But this isn't the kind of detail I would expect HSBC to share with customers. A bank's fraud detection systems will be most effective when the triggers or thresholds it uses are not widely known, in order to limit the ability of scammers to circumvent those triggers.

HSBC has noted in its submission to us that it's system flags payments that may indicate the risk of a scam or fraud. HSBC says that the third payment was likely flagged because it indicated that a scam or fraud trend was emerging. But it has said the earlier payments were likely simply not unusual enough, in the context of Miss L's account, to have flagged as unusual.

My role here is to determine whether the point at which HSBC did intervene was reasonable given the payments Miss L made as part of the scam and how she usually operated her account. And having looked closely at her account statements I'm satisfied that it was reasonable for HSBC to intervene when it did, I would not expect it to have stepped in earlier.

I say this because while the first two scam payments were relatively large, they were to an account in Miss L's own name, and it was not unusual for her to make transfers of larger amounts to other accounts she held. I appreciate that Miss L had transferred money from her savings account to her current account shortly before making these payments out of her current account, but I don't think that would be enough to indicate to HSBC that something might be wrong, particularly given – as I noted above – that these were payments to another account belonging to Miss L, and so would be inherently less risky than payments to an unknown third party.

I consider that it was only by the time of the third payment that the pattern had begun to emerge that might suggest something untoward was going on. By that time three payments had been made or attempted in quick succession, to a total value of over £8,000, more than double the value of any payment Miss L had made in the preceding year. So I think it was appropriate for HSBC to intervene at this stage, and to stop the payment. Given its obligations to process the payments its customers ask it to make, I don't think it's reasonable to say HSBC should have intervened earlier. And on that basis, I don't think it would be fair or reasonable to ask HSBC to refund the money Miss L has lost.

I've also thought about whether HSBC could have done more to recover the funds after Miss L reported the fraud. I'm satisfied that HSBC could not have done more here. Miss L had transferred money to her own account with R before the funds were subsequently transferred on to the scammer. So HSBC wouldn't have the same obligations as the bank

responsible for the eventual transfer to the scammer's account. And in any case, the funds were moved on from the account with R before Miss L reported the scam to HSBC, so there would have been no funds to recover by that stage.

I appreciate how distressing it must have been to be a victim of a scam and there's no dispute that Miss L has lost out here. But it would only be fair for me to direct HSBC to refund her loss if I thought it was responsible for the failure that caused it. And with what I've seen, I don't think I can fairly conclude that it was a failure by HSBC that led to Miss L's loss.

I'm sorry to disappoint Miss L, as I know she feels strongly about this matter. But in the circumstances, I will not be asking HSBC to take any further action.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 20 December 2023.

Sophie Mitchell
Ombudsman