

The complaint

Mrs K is unhappy that HSBC UK Bank Plc is not refunding her, as the receiving bank, after she says she was the victim of an Authorised Push Payment (APP) scam.

Mrs K has used a Claims Management Company (CMC) to bring her complaint to both HSBC and our service.

What happened

Mrs K transferred amounts of £10,000 and £8,000 to an account held at HSBC. She later raised a claim with her bank saying she made the payments as part of a scam. The CMC brought the complaint to our service saying HSBC was responsible for the following reasons:

- it failed during its account opening process to identify its customer was a fraudster;
- it failed to identify suspicious account activity which could have prevented Mrs K's losses; and
- it failed to act quickly and take appropriate actions when it was notified about the scam.

HSBC looked into the claim. It said at the time it carried out the relevant account opening checks. Its internal fraud systems did not detect these payments for a number of reasons. It wasn't accepting liability for the scam and not offering any reimbursement under the CRM code.

Our investigator looked into the complaint and said she'd considered HSBC's obligations and its decision not to refund Mrs K in line with its application of the CRM code. She said:

- She couldn't consider the account opening process here. As she had received evidence about the date the account was opened and she was satisfied we didn't have the jurisdiction to consider this element of the complaint.
- There wasn't anything about the account activity that did or ought to have given HSBC cause for concern and intervened and therefore prevented Mrs K's losses.
- By the time the scam was reported the funds had already been removed from the account so HSBC couldn't recover Mrs K's money in response to the scam claim.

Mrs K's CMC asked for the complaint to be passed to an ombudsman for final 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 come to the same conclusions as the investigator for largely the same reasons.

DISP 2.7.6R(2B) is applicable where the consumer has been the victim of an Authorised Push Payment (APP) scam. As I've concluded in another linked decision, I haven't been persuaded that Mrs K was the victim of an APP scam. But HSBC has considered the complaint as if she was. So, I have considered its consideration of her complaint and its application of the CRM in doing so.

To clarify, this decision focuses solely on the actions of HSBC – as the Receiving Firm of the accounts where Mrs K made payments to.

Among 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 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').

And 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 agreed to abide by the principles of.

The relevant considerations for Receiving Firms under the CRM Code sets 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 if HSBC met the standards required of it under the CRM Code, I have looked at whether there was anything in the way the account was being used that should have given HSBC any cause for concern and finally; once notified of fraud did it act appropriately and in a timely manner. And if I consider there were failings in relation to any of the above, I have to consider whether HSBC's acts or omissions fairly resulted in Mrs K's losses.

I would like to point out that at this point, that while HSBC has provided our service with information about the receiving bank account – it has done so in confidence. This is to allow us to discharge our investigatory functions and HSBC has provided that which is necessary for the determination of this complaint. Due to data protection laws our service can't share any information about the beneficiaries, the receiving bank account or any investigation and action HSBC subsequently took. However, I would like to assure Mrs K I have thoroughly reviewed and considered all the information provided before reaching my decision.

Prevention – the account opening process

As the investigator set out, we can't consider the account opening element of the complaint. Because the account was opened prior to 31 January 2019 we can't look at HSBC's acts or omissions with regards to the account opening. This is because DISP 2.7.6R(2B) which enables a payer to complain about the receiving bank, is limited to acts or omissions on or after the 31 January 2019.

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 to be alert to other risks - such as fraud, which would include giving consideration to unusual and out of character transactions.

Prior to the payments from Mrs K, I can't see that there was any suspicious activity on the account that means HSBC failed to prevent or detect the receipt of fraudulent funds. I'm also satisfied there was no notification of fraud on the account prior to the payments Mrs K made into the account and no other red flags where it could reasonably be argued that HSBC might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions.

So, from what I've seen, I'm satisfied HSBC has demonstrated that it has taken reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. I also don't think HSBC ought reasonably to have had concerns where I would have expected it to have intervened, so I can't fairly say that it could have prevented Mrs K's losses in this way either.

Response to the 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.

Unfortunately, Mrs K's funds had already been moved on by the time it was notified. So, I'm satisfied HSBC couldn't have done anything to prevent Mrs K's losses.

So, taking the above into consideration I'm satisfied, following notification of APP fraud, HSBC responded in accordance with the procedures set out in the Best Practice Standards. And I don't think I can fairly say HSBC didn't do enough to respond to the alleged APP fraud.

Summary

Overall, I'm satisfied that HSBC met the standards required of it under the CRM Code. I also don't think HSBC could've done anything more as the Receiving Firm to have prevented the loss of Mrs K's money. And it responded appropriately once notified of the fraud.

I appreciate this will come as a disappointment to Mrs K, but I'm satisfied that HSBC doesn't need to refund him for her losses

.My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 8 September 2023.

Sophia Smith
Ombudsman