

The complaint

Mrs J complains that HSBC UK Bank Plc didn't do enough to protect her from the financial harm caused by two scams, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs J was the victim of two scams, the first of which was a purchase scam. In October 2022, she contacted a scam merchant who was based overseas, having seen a recommendation on social media from someone she'd previously made purchases from. The scammer sent Mrs J images of their products and they also spoke on the phone about what she was hoping to buy.

Between 26 October 2022 and 8 December 2022, she made 27 debit card payments from her HSBC account to an account she held with a digital remittance service I'll refer to as "R" totalling £8,290.51. From there the funds were sent to the scam merchant.

Some of the payments were for what Mrs J understood to be customs fees, but she realised she'd been scammed when she didn't receive the items she'd purchased.

Unfortunately, Mrs J was also the victim of an investment scam. In December 2022, she saw an advert on social media about an opportunity to invest in forex and stocks and shares. She reached out to "the scammer" who told her he'd made substantial profits investing in a company I'll refer to as "N".

The scammer said Mrs J could start by making a small deposit and she was able to make a small withdrawal early on, which reassured her the investment was genuine. The scammer asked her to send funds to other accounts in her name and from there the funds were paid to the scam company. Between 28 December 2022 and 20 February 2023, Mrs J made 71 debit card payments to three accounts in her own name totalling £74,947.21.

After the first few deposits, the scammer told Mrs J the investment wasn't making any profit and she would need to send more money. But when she asked to make a withdrawal, he said she'd need to pay tax on the profits. She realised she'd been scammed at the end of February 2023 when she was still receiving demands for further payments.

She complained to HSBC but it refused to refund any of the money she'd lost. It said she'd authorised the transactions and that she should contact the merchant directly. It explained the Contingent Reimbursement Model ("CRM") Code didn't apply to card payments and there were no chargeback rights because they were secure transactions.

It said the transactions weren't highlighted by its fraud detection system as they weren't deemed suspicious and didn't match current fraud trends, pop up warnings wouldn't have

been given as the payments were made via the merchant website and it didn't accept she was paying a new payee because card transactions merchants aren't classed as payees. It said it had no visibility of the final beneficiary as the payments were to money transfer services and it didn't try to recover the funds as this is only done for bill payments.

Mrs J wasn't satisfied and so she complained to this service. She said HSBC should have identified the payments as unusual and that it should refund the money she lost plus £500 compensation and legal fees.

Her representative said HSBC should have intervened as Mrs J made 112 payments to four new payees totalling £96,595.90 within the space of four months. When it did intervene the questions centred on whether she'd authorised the payments and it didn't communicate that she could be victim to a scam.

They said HSBC should have intervened when Mrs J made the last payment of £1,000 on 28 December 2022 as by this point she'd already made 12 payments in a single day totalling £5,343.12. They accepted some of the payments were low value but they argued she was paying new payees and the cumulative daily amounts, the volume of the payments and the fact she was making payments in quick succession ought to have raised concerns. They said there were multiple fraud indicators including the rapid depletion of funds, multiple unusually high payments, a sudden increase in spending, a sudden change to the operation of the account and numerous payments in single days.

They argued that in July 2022 the largest payment Mrs J made was a card payment of £2,031.52 to HMRC, in August 2022 it was a card payment for £416.91 and in September 2022 it was a bank transfer of £424. And only two other payments exceeded £200. They said HSBC should have contacted Mrs J and asked her why she was making the payments, who she was trading with, how she found out about the company, whether she'd researched the company, whether she'd checked the Financial Conduct Authority ("FCA") website, what returns she'd been predicted, whether she'd made any withdrawals and whether she'd been sent proof of the customs fees she was being asked to pay.

They said she hadn't been told to lie and so she'd have explained she was making a purchase from a merchant who was based overseas, she hadn't been sent proof of the customs fees and she was being assisted to invest by someone she'd found on social media.

They argued it would have been obvious Mrs J was the victim of a purchase scam because she was sending so many low value payments and there was no proof of customs fees. And it would have been apparent that the investment was a scam as she had no access to a trading account and there was no website. So it should have provided scam advice and an effective warning which would have stopped Mrs J from making any further payments to either scam.

Our investigator didn't think the complaint should be upheld. She explained that all the payees were money transfer institutions and so it wouldn't have been apparent that she was making payments for an investment. She didn't think the payments were unusual or suspicious considering Mrs J's normal account activity, explaining she often made several payments using her debit card in a single day. She noted the disputed transactions were spread out over five months and there was always sufficient funds in the account and a balance remaining following each payment. Further, by the time the payment values had increased, the payees were no longer new payees and it wouldn't have been unusual for her to have made slightly larger payments to accounts held in her own name.

Our investigator further commented that as the seller in the first scam was recommended by someone Mrs J had previous dealings with, she'd been speaking to them for two months and seen pictures of what she was buying, it's unlikely HSBC would have been able to stop her from going ahead with the payments. And as she didn't speak to or interact with HSBC at the time of the payments, it didn't miss an opportunity to identify they were being made to a scam. Finally, she explained there would have been no prospect of a successful recovery because Mrs J had paid accounts in her own name and the funds were moved on from there. And she didn't think she was entitled to any compensation.

Mrs J's representative has asked for the complaint to be reviewed by an Ombudsman arguing that in the six months prior to the scam there were a few payments over £100 and only two payments over £500, yet she paid out £12,000 in November, £42,000 in December and £81,000 in January. She also paid out over £5,000 on 28 December 2022 and £13,000 on 16 January 2023.

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 conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mrs J has lost money. I know she feels strongly about this complaint and this will come as a disappointment to her, so I'll explain why.

I've thought about whether HSBC could have done more to recover Ms K's payments when she reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Ms K).

It's only possible to make a chargeback claim to the merchant that received the disputed payments and the business she paid would have been able to evidence they'd done what was asked of them. So, any chargeback was destined to fail.

I'm satisfied Mrs J 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Mr J is presumed liable for the loss in the first instance.

It's not in dispute that Mrs J was scammed, but although Ms K didn't intend her money to go to scammers, she did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether HSBC could have done more to prevent the scams from occurring altogether. HSBC ought to fairly and reasonably be alert to fraud and scams, so I need to consider whether it ought to have intervened to warn Mrs J when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting her from financial harm due to fraud.

HSBC has confirmed the payments didn't flag as suspicious on its systems and that the call Mrs J recalls took place on 7 March 2023. This was outside of the scam period and related to a faster payment of £1,000. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mrs J normally ran her account and I don't think they were. Critically, all the payments were to accounts in Mrs J's own name and so even though she hadn't paid the accounts before, there would have been no reason for concern based on the nature of the payee alone. The payments to the first scam were all to an account Mrs J held with R, the highest payment was £1,666.99 and the payments were spread out over about six weeks. I accept there were some days when she made multiple payments but this wasn't unusual for the account and those payments were all low value, so there would have been no reason for HSBC to intervene.

When Mrs J started to make payments to the second scam, she continued to use R and so even though she made thirteen payments totalling £5343.12 on 28 December 2022, she was making payments to an account in her own name which was a well-established payee with a history of multiple payments on the same day, so there would have been no cause for concern.

I accept that after this point Mrs J started to make payments to three other payment institutions which were new payees, but all the accounts were her name, none of the payments were high value and there was always sufficient funds in the account and a balance remaining following each payment. I accept the payment of £2,500 Mrs J made on 3 January 2023 was to a new payee but this was an account in her own name and considering the cumulative spend on 28 January 2022, £2,500 wasn't out of character. I also accept the cumulative spend on 16 January 2023 was over £13,000 but by this time the payee wasn't new and there was a well-established pattern of spending which meant the payments weren't suspicious or unusual. Because of this I don't think HSBC missed an opportunity to intervene.

Compensation

Mrs J isn't entitled to any compensation.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mrs J paid accounts in her own name and moved the funds onwards from there.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear she has lost money and the effect this has had on her. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 23 April 2024.

Carolyn Bonnell
Ombudsman

