

The complaint

Mr G is complaining that HSBC UK Bank Plc won't refund the money he lost in scam.

What happened

Mr G has a current account with HSBC.

In March 2023 Mr G was contacted by a scammer pretending to be from the Ministry of Justice. The scammer told Mr G he would be deported if he didn't pay a penalty fine for not paying the correct taxes.

The scammer told Mr G to open an account in his own name with an electronic money institution (EMI.) He asked Mr G to pay some money into this new account from his account with HSBC. Mr G made two payments of £800 and £545 to the new account using his HSBC debit card, and he also made some online transfers to the new account from an account with another bank.

Once the payments arrived in Mr G's new account, Mr G transferred them to the scammer. The scammer told Mr G the payments would be refunded to him after an hour. When this didn't happen, Mr G realised he'd been the victim of a scam. He contacted HSBC (along with the EMI and his other bank) to explain what had happened.

HSBC didn't agree to refund Mr G for the payments he'd made. They said that Mr G had authorised the payments, and there was nothing suspicious or out of character about them at the time that should have alerted them to intervene. And as the payments from HSBC had been made to an account with an EMI, and the scammer had taken the money from there, they thought Mr G should direct his complaint to the EMI.

Mr G didn't agree with HSBC's response and brought the complaint to us. Our investigator looked into things but didn't think HSBC had done anything wrong – so he didn't think they should refund the money Mr G had lost to the scammer. Mr G didn't agree, so his complaint's been passed to me for review and 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.

I'm sorry to learn about what happened to Mr G. As the victim of a scam, I fully understand why Mr G would feel he shouldn't lose out. But I don't think I can fairly say that HSBC should refund the money Mr G lost in the scam. I'll explain why.

As the investigator's explained, it looks like Mr G's other bank refunded the payments he'd made by online transfer under the Contingent Reimbursement Model (the CRM code) – but these particular provisions don't apply here as the CRM code doesn't cover debit card payments.

It's not disputed that Mr G authorised the debit card payments from HSBC into his new account with the EMI. And HSBC have a duty to act on Mr G's instructions.

But in some circumstances a bank should take a closer look at the circumstances of the payments – for example, if the transaction is unusual, or looks out of character or suspicious. And if so, the bank should intervene, usually by not immediately authorising the payment, and contacting the customer directly.

I've thought carefully about the circumstances here and I don't think there was anything suspicious or unusual about the payment which should have alerted HSBC to intervene. The payments were made using Mr G's debit card and were authorised by him. They were being made to a well-known EMI, so there wouldn't have been anything immediately suspicious about the recipient of the payment. They weren't for what we'd generally consider to be significant amounts, nor were they out of character for the way in which Mr G generally used his account. As the payments were made online through the EMI, and not through HSBC, HSBC didn't have contact with Mr G when he made the payment, in order to identify the scam.

Overall, I don't think HSBC were unreasonable to authorise the payments without intervening on this occasion.

Mr G contacted HSBC shortly after he realised the scam had taken place. He's mentioned that the funds don't show as being deducted from his account until the next day, so he thinks HSBC should have been able to recover the payment. But although there is often a delay in card payments showing on an account, the records show the payments were processed and the funds were actually credited to (then moved on from) Mr G's EMI account before he contacted HSBC about the scam.

In any event, because the payments were made with Mr G's debit card, they couldn't be recalled in the same way that an online transfer sometimes can be. It's possible to dispute a debit card payment through a process called chargeback, which can sometimes be attempted if something has gone wrong with a debit card purchase, subject to the relevant card scheme's rules. But I don't think that would have been successful here, because nothing went wrong with the debit card transactions - the payments Mr G authorised online through the EMI arrived in his EMI account successfully. So, I don't think there was anything HSBC could reasonably have done, at that point, to retrieve Mr G's money.

I'm really sorry to disappoint Mr G, and I've no doubt this has been a very distressing experience for him. But I don't think HSBC could reasonably have done any more here to try to prevent the scam, or to recover Mr G's money once they were aware a scam had taken place. So, I'm not going to ask them to refund the payments to him.

My final decision

My final decision is that I'm not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 September 2023.

Helen Sutcliffe
Ombudsman