

The complaint

Mr H holds a current account with HSBC UK Bank Plc. In August 2022, he bought some goods from a company in Europe (the supply company). The cost of the goods was just under £5,700. Mr H used a European payment company (the payment company) as an intermediary.

Mr H never received the goods and thinks that both the supply company and the payment company were fraudulent. He asked HSBC to recall the money, but only received just under £2,200 back. He wants HSBC to refund the rest.

What happened

Mr H ordered various goods from the supply company and sent the money to the payment company, for onward transfer to the supply company. The supply company had suggested the payment company. Mr H understood that this was to provide two-way confidence that he would send the money and the supply company would supply the goods. I understand that Mr H made the payment from his personal account, but the goods were for a small business which his wife ran.

The payment company provided a contract which Mr H and the supply company signed. In outline, the contract said that Mr H would send the money to the payment company, the payment company would notify the supply company when it received the funds, and the supply company would send the goods to Mr H. The payment company would then transfer the money to the supply company.

Mr H sent the money to the payment company on 24 August 2022 from his HSBC account in the UK. Over the next few days, Mr H, the supply company, and the payment company were in contact several times. The payment company kept saying it hadn't received the money.

After some email correspondence, the supply company suggested that Mr H should ask HSBC to recall the original payment and make another one. On 30 August 2022, Mr H did ask HSBC to recall the money, but by that time he suspected fraud and did not send another payment.

HSBC attempted to recall the money several times. In July 2023, it received just under £2,200 back from the payment or supply company's Bank in Europe, which it has passed on to Mr H. This was several months after we started our investigation into the complaint.

I previously sent Mr H and HSBC a provisional decision about this complaint. In that provisional decision, I said that based on what I knew at the time, I didn't intend to tell HSBC to give Mr H any more money back. But as things had changed during our investigation, I gave both parties the chance to comment before I finally decided what to do.

The time I allowed for comments has now passed. Neither Mr H nor HSBC have sent us anything new for me to consider. I have re-examined all the information we have, but as there is nothing new, I have reached the same conclusions as I set out in my provisional

decision. This final decision is therefore virtually identical to my previous provisional 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.

Before discussing the details of Mr H's complaint, I would like to say that I can only consider HSBC's actions, not those of the payment company, the supply company, or the European bank. I would also like to say how sorry I am to hear about what happened to Mr H. I understand that he and his wife found the events very distressing, and they both have my sympathy.

From the information I have seen, it's not totally clear if the supply company or the payment company set out to be deliberately fraudulent. However, Mr H certainly thinks they both did. He's told us that "*they were both in (the possible fraud) together and had no intention of fulfilling their end of the bargain*". And I am satisfied that he sent money to the payment company but never received the goods from the supply company. So, for this decision, I have assumed that fraud took place along the lines Mr H has described. I have considered HSBC's actions accordingly.

There is no doubt that Mr H followed HSBC's normal process when he requested the payment. By doing so, he instructed HSBC to move the money. I fully accept that he only did this because of what he now believes to have been fraudulent actions by the payment company or the supply company, but he effectively authorised HSBC to make the payment. Frauds of this type are often called *Authorised Push Payment (APP)* frauds.

While banks are normally expected to act on their customers' instructions, APP fraud is a significant concern in the banking industry and at the time of Mr H's payment, I would have expected HSBC to be looking out for anything noticeably unusual about its customers' payments. And if it saw anything worrying, I would have expected it to contact the customer concerned.

I understand that Mr H had never made a payment like this before. So, for him, it was unusual. HSBC has told us that before it sent the payment its fraud team "*completed their checks*" and cleared it. I don't have many details of these checks and whether they involved any direct contact with Mr H. But if they did, I'm confident Mr H would have told HSBC to proceed. After all, it was through a payment process for which he had a contract, to a supply company he knew about, for goods he wanted. At that stage, neither HSBC nor Mr H had any significant reason to suspect fraud. However, the crux of Mr H's complaint is about what happened afterwards.

Mr H doesn't believe that HSBC acted quickly enough when he asked it to recall the funds. After he received the partial refund, he said that "*HSBC should have been able to recover all the funds*", and I understand that he believes HSBC caused delays which prevented such a full recovery.

Mr H has told us that he asked HSBC to recall the payment on 30 August 2022, some six days after he sent it. HSBC has sent us some notes and records from the time, and they say the same thing. The notes also say that HSBC sent a "*recall to the (European bank) to have them release the funds back to (its) account on (30 August)*". I have no reason to dispute these notes, so I am satisfied that HSBC requested the money back from the payment company's bank on the same day as Mr H asked it to. I don't know if it did so immediately or later the same day, but once fraudsters receive money into a bank account they control, they

usually move it on quickly to stop it being recovered. So, as six days had already passed since the payment, I doubt it would have made a significant difference if HSBC acted instantly or later that day.

Clearly, Mr H then had to wait several months to get a refund and it was still only partial. Much of the delay seems to have been due to the European bank asking HSBC for a *letter of indemnity* before it would send the money back. In outline, a letter of indemnity would have protected the European bank if the payment company, the supply company or another third party subsequently claimed the money was rightly theirs. I have seen a large amount of correspondence about this, involving Mr H, HSBC, the European bank, and the payment company.

The correspondence was quite confusing and at one stage HSBC led Mr H to think he should provide the letter himself. It seems that HSBC initially declined to send such a letter to the European bank. It told us that an indemnity “*shouldn’t be required for this purpose*”. But it subsequently changed its mind and provided an indemnity. This was after we had started our investigation into the case. At that point, the European bank sent just under £2,200 back, which Mr H has now received.

I understand Mr H’s point is that if HSBC had acted sooner, it may have been able to recover more money for him. However, I do not think this is borne out by the events. The critical action that HSBC needed to take was to attempt to recall the money when Mr H said he suspected fraud. As I have already indicated, I’m confident it did this effectively. So, I can’t hold it responsible for the loss Mr H suffered.

Furthermore, although I can’t consider the actions of the European bank, for Mr H’s benefit I would like to add that I have seen some of HSBC’s internal notes which suggest that after receiving the recall request, the European bank put the money it still had “*on hold*”, and there was no further loss.

Mr H has also mentioned that HSBC charged him a small fee for trying to recall the money. I have seen some of HSBC’s notes which show that it raised this charge on 1 September 2022, the day after the recall. Mr H has asked us to tell HSBC to refund this fee, but it seems to have been in line with HSBC’s terms and conditions, so I can’t fairly tell HSBC to do this. Any refund it may wish to make is entirely a matter for its own discretion.

So, in summary, although I can’t tell the full extent of the checks HSBC carried out before processing the payment, even if it had checked the details with Mr H, I think he would still have authorised it. I also think HSBC took reasonable actions to recover Mr H’s money for him, although it was only partially successful. On this basis, I see no grounds to tell HSBC to refund any more money to Mr H.

My final decision

For the reasons I have given above, I do not uphold Mr H’s complaint about HSBC UK Bank Plc. I am not going to tell it to give him any more money back.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 17 October 2023.

Steve Townsley
Ombudsman