

The complaint

A limited company 'P' complains that HSBC UK Bank Plc didn't do enough to prevent the loss they suffered when they sent money to an HSBC account as the result of a scam.

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. In 2021 P was the victim of an email interception scam. As a result of this on 1 October 2021 P sent a payment of €79,922.20 to an account held with HSBC. At the time P believed this to be the next payment instalment towards an investment opportunity with a firm I'll refer to as 'E'. But they later realised the email had been interfered with and the account details changed – meaning the genuine E hadn't received their money.

On 11 October 2021 P's own bank 'S' informed HSBC of this. HSBC responded and said that funds remained, but ultimately this was only around €17.50. P complained to HSBC - in summary they said HSBC's response was vague communication about what remained in the account. And that HSBC had allowed a scammer to open and operate an account. HSBC didn't think they'd done anything wrong, and the matter was referred to our service. One of our Investigators considered the complaint but didn't recommend it should be upheld. HSBC accepted this outcome, but P didn't. They asked for an Ombudsman to make a decision.

In October 2023 I issued a provisional decision in which I said:

"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 a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

I don't think that the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) applies to the circumstances of this complaint. The CRM code only applies to payments made in pounds sterling to and from UK banks. Here, S appear to be based outside the UK and in any case the payment was sent in euros. So, I don't think HSBC not considering reimbursement under the CRM Code was unfair nor unreasonable.

I'm satisfied that HSBC correctly followed their account opening process for the account that received money from P. I can see that they took valid identity documents, proof of address and a selfie of the accountholder, along with conducting further electronic ID and verification checks. I don't think there was anything at this stage that would have indicated that the account might later go on to be used in connection with a fraud or scam. So, I don't think there was a failure by HSBC whilst opening the account which resulted in P's loss.

P have argued that the wording HSBC used in initially telling S that 'funds remained' was

vague and that this impacted their ability to recover their loss. I don't agree that is the case. Even if I were to find that the wording was vague (something I make no finding on), I don't think this would have made a difference. HSBC's follow-on message the next day referred to 'minimal funds'. And I don't think it's at all likely that in that time period P would have done anything that would have impacted their ability to have recovered their lost funds from any other source.

For a complaint of this nature, I'd usually next go on to consider the activity on the account that received the funds from P, with a view to assessing whether there was unusual or suspicious activity, such that HSBC ought to have intervened or otherwise done more. But here, HSBC have evidenced that despite searching their systems, they no longer have statements for the recipient account. Inevitably this means that I must make my findings on the balance of probability, taking account of the information that is available.

The evidence I have indicates that the account was opened in May 2021 and was a foreign currency account. The information HSBC knew about their customer was that they were an unskilled worker in the retail sector with an annual income of around £22,000. Given this information, I think a significant incoming payment of nearly €80,000 (representing nearly four years salary to their customer) is something that would have stood out. And I think it should have put HSBC on heightened alert to be monitoring the account.

I also accept that its most likely HSBC correctly stated that only €17.50 remained in the account upon notification (on 11 October 2021). So we can also safely conclude that almost €80,000 was spent or otherwise moved on from the account between 1 and 11 October 2021. This fits in with what I know for the account activity usually seen upon the receipt of fraudulent funds. In the vast majority of cases, the money is promptly spent or transferred. Presumably as the scammer will be concerned about the fraud being discovered and the account frozen.

And in the absence of any other evidence as to the activity on the account, I think it's most likely that there would have been a significant outgoing payment soon after the arrival of P's funds. Given I think HSBC should have been paying attention to this account, I think the outgoing payment should have been stopped and the account blocked.

HSBC then would have seen that their customer may not have been the intended beneficiary of the payment from P. I say this because the evidence P has provided shows that they put E down as the beneficiary of the payment. And this clearly would have shown that the intended beneficiary was a business of some sort with no obvious connection to the named accountholder of the recipient account.

When the scam was reported HSBC attempted to contact their customer to ask about the incoming payment. But it seems there was no response. So, I think had HSBC attempted to speak to their customer at the time, the same would have happened and I don't think they would have received a response. But even if they had, I don't think that the accountholder would have provided a plausible explanation for the beneficiary name mismatch and that they would have been able to evidence their entitlement to the funds before the scam report was received (10 days later). As such, I think all of P's money would have remained available for recovery and that this would have been returned soon after.

I've also considered whether P should bear some responsibility for their own loss such that I should make a reduction for contributory negligence. And I'm not intending to in the circumstances of this complaint. I've seen the communication requesting the next payment to E (which was expected) and I don't think there was anything that would have shown this to obviously have been a scam or suspicious at the time. P have also said their payment request was submitted to their bank in writing. And I've not seen evidence to support that

their own bank provided a scam warning which P disregarded. Overall, I don't think P either knew or reasonably ought to have known at the time that there was a potential problem but continued to instruct the payment despite this.

Putting things Right

I'm intending to direct that HSBC pays P their full loss of €79,922.20. It's unclear whether the €17.50 that remained has already been returned. So HSBC may deduct from the €79,922.20 any amount already recovered and returned to P.

I also think that 8% simple interest yearly should be added to compensate P for being without funds they otherwise would have had access to. It seems that S provided an indemnity in late October 2021. And as international funds being returned would likely have taken a few weeks to facilitate (and HSBC say their policy on this is to do so within 30 working days), I think it's likely the funds would have been returned on 1 November 2021. As such the 8% interest should be calculated between 1 November 2021 and the date of settlement."

P responded to say they accepted my provisional decision. HSBC responded with some further comments. Part of HSBC's further submissions concern P's eligibility to bring a complaint to our service within our jurisdiction rules. Having since shared some further evidence about P, HSBC have said they will accept what our service has said about our jurisdiction, so I don't need to comment further on that point.

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.

As part of their further submissions HSBC were able to locate the statements in relation to the recipient account. These showed the account activity to be as I suggested it would likely be in my provisional decision. Essentially after the arrival of P's funds, in the days that followed there were transfers and payments for the full amount excluding the €17.50 that was later recovered.

The first such outgoing payment was for over €28,000. And I maintain that this is something that ought to have prompted HSBC to have stopped the payment and I think it's most likely that events would have played out as I've set out above in my provisional decision. Ultimately resulting in the recovery of the full amount sent by P.

HSBC have also questioned whether, as a business, P ought to have done more to have an awareness of scams that they might come across in the course of their business. And whilst HSBC acknowledged this complaint was about them, not P's bank S, they also questioned whether S did all they should in the circumstances.

I've already considered whether P should bear some responsibility for their own loss and referenced this in my provisional decision. P confirmed that the payment instruction was sent to S in written form and then processed from their account. They said that there wasn't further interaction and that no warnings were provided. So I maintain that this isn't a case where warnings were given and ignored such that a reduction in award would be appropriate on that basis.

I'm also not persuaded that (particularly in 2021) a business of P's size (and highlighting that the director is the sole employee) not having educated itself fully about email interception

scams is a basis upon which I should fairly reduce my intended award. It is of course easy to propose such things in hindsight, but I still don't think that when instructing the payment P knew or suspected there was a potential problem but continued despite this.

Overall, having considered all the further submissions, I'm not persuaded to deviate from the outcome explained in my provisional decision.

Putting things right

HSBC UK Bank Plc must pay P their full loss of €79,922.20. It's unclear whether the €17.50 that remained has already been returned. So HSBC may deduct from the €79,922.20 any amount already recovered and returned to P.

8% simple interest yearly should be added to compensate P for being without funds they otherwise would have had access to. This should be calculated between 1 November 2021 and the date of settlement.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must take the steps outlined at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 17 January 2024.

Richard Annandale
Ombudsman