

The complaint

Miss S complains that HSBC UK Bank Plc didn't do enough to prevent her losing money to a scam.

Miss S has used a representative to bring her complaint, but for ease of reading, I'll mostly just refer to Miss S herself.

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 2022 Miss S says she was the victim of a scam. Following some difficult personal circumstances, she found a 'spiritual healer' online who she believed could help her.

She says she ended up sending around £180,000 to the account details she was provided with. She now believes that this was a scam and that she has been taken advantage of in her vulnerable state. The payments appear to have been sent to two different accounts, one of which was held with HSBC.

Miss S sent payments towards the scam from two of her banks 'N' and another bank 'D' (who are based outside the UK). I understand that following Miss S raising this with N, they reimbursed around £116,000.

So whilst the payments from N which arrived in the HSBC account appear to have been refunded, Miss S says she still has an outstanding loss in relation to the money sent from D. She has also said that D haven't provided her with any redress. My understanding is that the following payments are those still in dispute.

Date arrived with HSBC	Amount in GBP
8 September 2022	£1,552
14 September 2022	£25,000
14 September 2022	£9,000
TOTAL	£35,552

Miss S complained to HSBC. And whilst they sympathised with her position, they didn't believe they'd done anything wrong and declined to provide a refund. The complaint was considered by our service and one of our Investigators recommended it should be upheld. He thought HSBC should pay Miss S £34,000 plus 8% simple interest. Miss S accepted this outcome, but HSBC didn't. HSBC did however make an offer to pay £17,000 plus 8% interest as a gesture of goodwill without any admission of liability to draw matters to a close.

Miss S didn't accept this offer and as agreement couldn't be found, the complaint has been passed to me to decide. 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.

Miss S states that she sent £72,924 to the HSBC account from her account with N. And that she sent £64,552 from her account with D to the same HSBC account. She also says she sent a further £43,352 to the fraudsters account with 'R'. The evidence from N supports that she received around £116,000 which seems to be the total of the payments from N to HSBC and the payments to R (and its unclear which account those came from).

Our Investigator has sought clarity around this, as we'd need to be sure that Miss S still has an outstanding loss before any award could be made. But as I'm not intending to uphold this complaint, this isn't something I need to resolve at this stage. If I'm persuaded by any further submissions to change the outcome, then I would need to see further evidence to confirm that there is an outstanding loss.

I've looked at the account activity on the recipient account back to 31 January 2019. And I don't think there was anything prior to September 2022 where I'd have expected HSBC to have done more in relation to their monitoring of the account. The account had periods where it wasn't frequently used and when it was in use, there wasn't anything suspicious or indicative of potential fraud such that I think HSBC should have done more.

But in September 2022 the way in which the account was used changed significantly. There were many large payments made into the account by Miss S. And much of those funds were then either withdrawn as cash or transferred from the account. The recipient account statements show that on 9 September 2022 there were two cash withdrawals totalling £23,000. And that across 12 and 13 September 2022 there were four outgoing payments which together totalled £22,000. The notes from HSBC also show that their accountholder attempted another very large cash withdrawal on 15 September 2022, which they declined to process. The notes record that the accountholder said at the time that the money had come from Miss S (who was described as a business partner) and that it was to be passed on to another business partner.

By 20 September 2022, HSBC blocked the account as they were concerned about the activity. They tried without success to contact their accountholder to ask further questions and they reached out to N to ask them about the incoming payments. The notes I've seen show that N responded on 23 September 2022 and said "Customer confirmed payments as genuine".

And on 30 September 2022 HSBC first received notification alleging that Miss S' payments into the account had been made as the result of a scam. By this point I understand that around £2,300 remained in the account and that this was returned (presumably to N) in November 2022.

I agree that the account activity in September 2022 was both unusual and suspicious. And I think that HSBC ought to have acted sooner than they did to inhibit the account and to investigate. But I don't need to make a finding as to the exact point at which that intervention ought to have happened, as I don't think it would have ultimately made a difference to the loss suffered by Miss S, I'll explain why.

Had HSBC intervened earlier, the best evidence of what would have happened that I have, is what actually did happen when they did intervene in the account. It's most likely that they would have contacted N, who would have confirmed the incoming payments from Miss S as genuine (as they later did). And I wouldn't have expected HSBC to have reached out to D

(as they are an international bank) in the same way that they did to N. But even if they had, I've no reason to think the response would have been different to that received from N. The explanations given when making the cash withdrawals also suggest that whilst there were funds remaining in the recipient account, the accountholder was prepared to engage with HSBC and to provide an explanation to facilitate the movement of the funds.

I've also considered the evidence provided by Miss S of the messages between her and the scammer. These show that she had sent screenshots of her payments leaving her account(s) to the scammer. So if HSBC had pushed for further evidence, its likely these screenshots would have been provided. The scammer was able to convince Miss S he was genuine and persuade her to part with a significant amount of money. I don't think its likely that he wouldn't have been able to come up with some convincing documentary evidence to support his entitlement to the funds that had been paid into his account.

Ultimately, I just don't think that prior to notification of fraud being received (which was on 30 September 2022), in the circumstances of this complaint, there would have been enough for HSBC to have withheld the funds from their customer. Particularly once N would have confirmed the payments to be genuine. And as I think its most likely that HSBC would have had to release the funds with sufficient time for withdrawals to have been made before 30 September 2022, I can't say that HSBC not intervening sooner than they did caused the outstanding loss.

I'm also satisfied that the funds Miss S sent from D were all spent before HSBC blocked the account. So nothing HSBC did in relation to its recovery efforts (once they had been notified) impacted what could be returned.

I'm of course sorry to hear that Miss S has an outstanding loss as a result of a scam. And I'm pleased she was able to recover a significant amount from N. But as I don't think HSBC are responsible for failures which caused or contributed to the outstanding loss, or hindered its recovery, I'm not intending to direct that they need to do more to resolve this complaint.

I'm aware of HSBC's offer made as a gesture of goodwill as I've set out above. HSBC had indicated that if that offer wasn't accepted, they would be contesting the outcome of this complaint. It's a matter for Miss S to take up with HSBC as to whether they are still willing to honour the offer they previously made. But there isn't any reasonable basis upon which I can require them to do so."

HSBC responded to say they had nothing further to add. Miss S responded with some comments that I'll address below.

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.

Miss S has contested the validity of HSBC relying on what N told them about the payments. They say that this confirms the payments were authorised (which isn't in dispute) but doesn't confirm that they weren't the proceeds of crime.

I've considered this. The email HSBC received from N came from their fraud prevention department. And it says "*Customer confirmed payments are genuine*". The use of the word 'genuine' rather than just 'authorised' and the fact that the email came from the fraud department, who would have been aware of the possibility of scams due to the nature of their role, means I think it was reasonable for HSBC to rely on this. I'm not persuaded it

specifically only confirms authorisation, it says the payments were genuine. I'm not considering the actions of N here and what they did or didn't do upon receipt of contact from HSBC.

Ultimately, I don't think it was unreasonable for HSBC to have been reassured by and to have relied upon the email from N confirming the payments were genuine. I wouldn't have expected them to have questioned this further. So, I don't think this was a failing as Miss S has alleged.

But even if I'm wrong on that point and HSBC ought to have sought proof of entitlement to the funds Miss S sent (as she has suggested), this still wouldn't change my mind as to the outcome of this complaint. As I've mentioned above, the evidence shows that Miss S was sending screenshots of her payment instructions to the scammer. So, if asked, it's likely the account holder would have shared these, evidencing a link between them and Miss S. Which would most likely have meant that HSBC would still have had no reasonable basis to withhold the funds from their customer. Especially when taken in the context of what N had told them.

As I've previously mentioned, I'm sorry Miss S still has an outstanding loss, but as I don't think this is something HSBC are responsible for, I'm not going to direct them to do anything further.

My final decision

For the reasons 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 Miss S to accept or reject my decision before 5 December 2023.

Richard Annandale
Ombudsman