

The complaint

Miss C is unhappy that HSBC UK Bank Plc will not refund the money she lost as the result of an authorised push payment (APP) scam.

What happened

In summary, on 17 September 2022, Miss C received a call advising that her HSBC account had been compromised. She had earlier that day clicked a link sent in a text about a subsidy for energy bills and entered her personal and bank details into what she believed to be a government website. The caller referenced this. Shortly before she had called HSBC in response to a text about a transaction to a streaming service and it had told her it could see no such transaction.

The caller, who was using a spoofed HSBC number, advised she should move her money to a safe account – in this instance via an account she held with another bank (bank 2) that it had checked was not at risk. Miss C made nine transfers using her mobile banking app that totalled £17,371. No transfer exceeded £2,500. The caller then instructed Miss C to transfer this money to two temporary accounts, that they said were in the names of HSBC duty managers, whilst a new HSBC account was set up for her.

During the scam bank 2 intervened but the caller had successfully coached Miss C on how to reply to its queries and the payments were processed. The caller then instructed Miss C to delete all related calls from her call log, as well as the initial energy subsidy text, and confirmed the money would arrive in her new HSBC account within 24 hours. Miss C called HSBC in the morning of 18 September 2022 to check up on this, and at this stage it advised her she was most likely the victim of a scam.

Miss C says HSBC ought to have identified these transactions as out of character for her account and thereby detected the scam. Had it asked her about the payments she would have realised her HSBC account was not compromised and stopped any further transfers so the scam would have failed. She also says she did not receive the calls or voicemails HSBC says it made on 18 September 2022, but anyway they would have been too late to protect her. Being the victim of this scam has impacted her mental health, as well as her finances. She asks that HSBC refund her in full, with interest, and compensate her for the distress she has suffered.

HSBC said it would not provide a refund as the payments were made by Miss C to her own account at bank 2.

Our investigator did not uphold Miss C's complaint. She said the third payment ought to have triggered HSBC to intervene and contact Miss C, but she did not think this would have stopped the scam. She said Miss C had given false information to bank 2 when it intervened suggesting she firmly believed the fraudulent caller, and showing she would most likely have been successfully coached to satisfy HSBC's questions had it spoken to her. She said as the payments were made to another account in Miss C's name she didn't think HSBC could have done anything more to recover the money.

Unhappy with this assessment Miss C asked for an ombudsman's review. In summary, she said had the 'real' HSBC called her on the evening of 17 September the scam would have been broken as then she would have been speaking to two different people, both purportedly from HSBC, but telling her conflicting things about her account. And she says she would have responded promptly to any alert from HSBC – as evidenced by the call she had made to it earlier that evening. Miss C disagrees that she would have responded to a genuine HSBC call as she did to bank 2. She says at this early stage in the scam she was in much better control of her faculties, mind and emotion and so had HSBC contacted her it could have broken the spell of the scam.

I reached a different conclusion to the investigator and so issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

There's no dispute that Miss C made and authorised the payments. Miss C knew why she was making the payments. At the stage she was making these payments, she believed she was transferring money out of her account as it had been compromised. I don't dispute Miss C was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Miss C's instructions. So in the first instance Miss C is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that HSBC should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I think HSBC ought to be held liable in part for the transactions. I'll explain why.

Miss C argues the payments were out of character for her account and HSBC ought to have blocked them from the start. I am not persuaded this is the case – the payee was not new, and the values were not so high that the initial transaction(s) ought to have triggered checks. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. However, given the cumulative value and the speed of the transactions (the first three totalling £6,840 were made within three minutes of each other), I agree with the investigator that at the time of the third payment HSBC ought to have intervened. That pattern of activity was out of character for the

account and, as HSBC knows, it is also indicative of a possible safe account scam.

So what I need to decide is, based on the available evidence, what would most likely have happened, had HSBC intervened effectively. Miss C feels very strongly that a call from HSBC near the start of the scam would have changed the outcome. And I do think that is the case. At the time Miss C understood she was speaking to HSBC, she had checked the number the caller was using, and as the scammer had successfully spoofed an HSBC number Miss C was confident the call was genuine.

However, had HSBC held the third transaction until it had spoken to Miss C and asked her questions and for more of the basic surrounding context, I have no reason to doubt, as she says, that she would have explained she was being directed by who she thought was HSBC to move funds to a safe account. So I think HSBC would have realised this was a scam, explained what was happening to Miss C and so broken the spell. I do not think the scammer would have been able to successfully coach Miss C to the extent that she then did not believe HSBC when it confirmed her account had not been compromised.

I have taken into account that when bank 2 intervened using its webchat facility the scammer was able to successfully coach Miss C so that she gave false information that allowed the transactions to be processed. But the circumstances are significantly different – as the scammer was pretending to be from HSBC, I am satisfied had HSBC intervened and called Miss C the scam would have unravelled, and Miss C would not have gone on to make payments 3 to 9.

Should Miss C bear some responsibility for the overall loss?

I've also considered whether Miss C should also bear some responsibility for her overall losses. To make my decision I've thought carefully about the nature of the scam and the impact I think this reasonably had on Miss C when she was acting 'in the moment'. I don't think it was unreasonable for Miss C to have trusted that the call she received about her account being compromised was genuinely from HSBC given that the number had been spoofed as so appeared to come from HSBC. So, I can understand why Miss C would be concerned and fell victim to the pressure of acting quickly.

But as the scam unfolded bank 2 intervened. It explicitly flagged to Miss C on its webchat that it was concerned she may be the victim of a scam or fraud, yet Miss C went ahead. I have thought carefully about what it is realistic to have expected Miss C to then do when she was transferring the money given the pressure she would have been under in the moment of a call like this. But by the time she had received that warning from bank 2 I think there were enough red flags -

- the scammer had told her to give false information to bank 2;
- the call earlier in the evening about a specific transaction that HSBC confirmed it could not see;
- her recent decision to enter personal and financial information onto a website provided by a text link;
- the somewhat bizarre claim by the caller that they had an 'HSBC-specific random value generator'; and
- the instruction to move money to two different HSBC duty managers' account;

as well as enough time for Miss C to have reflected such that I find she should have called HSBC to check whether her account was secure, or not, before progressing.

I therefore do feel it is appropriate to reduce the amount of redress HSBC has to pay to

Miss C by 50%.

Finally, as Miss C had sole control of the other account at bank 2, I would not have expected HSBC to do anything more to try to recover the money.

It follows I am instructing HSBC to refund half of the money to Miss C.

This is a difficult decision to make, I'm sorry Miss C has lost a considerable amount of money and suffered such distress. I can understand why she would like to be compensated in full for her losses. I do accept Miss C has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, can be fairly held wholly responsible for what happened. For the reasons set out above I find HSBC should be held liable for 50% of Miss C's losses in the circumstances of this case.

Both parties responded to my provisional decision.

Miss C said whilst she could accept that payments 1 and 2 should not have triggered further checks, had HSBC intervened at payment 3 she would not have gone on to move any monies from bank 2 to the scammers and she would not have suffered any losses. She therefore asked that payments 1 and 2 be treated in the same way as payments 3-9 with regards to the refund awarded.

This response was shared with HSBC. It said a call would not have changed anything as Miss C had been coached by the scammers and this was acknowledged in the provisional decision. It argues it is logical therefore that had it intervened, as bank 2 did, the situation would have been the same. It also challenged why HSBC should be held liable when Miss C moved the money into an account in her own name and control at bank 2 before moving in on from there to the scammer. It asked if we had advised Miss C she should raise a complaint against bank 2.

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.

Where the evidence is inconclusive I have made my decision based on the balance of probabilities, so based on what I find to be most likely given the available evidence and the wider circumstances.

I have carefully considered both responses to the provisional decision. As the investigator has already advised HSBC, I can confirm that Miss C also raised a complaint against bank 2 - that investigation is complete.

I am not persuaded by HSBC's point that as the scammer was able to coach Miss C to ensure bank 2's intervention failed to prevent the scam, it is logical that had it intervened there would have been the same outcome. In fact I think that it is wholly illogical as if Miss C had spoken to the 'real' HSBC I am certain it would have been able to convince Miss C that its call and concern was genuine, and that she was at risk of falling victim to a safe account scam. It would have been a very different scenario to an intervention from bank 2.

If HSBC had held the third transaction until it had spoken to Miss C and asked her questions and for more of the basic surrounding context, I have no reason to doubt that Miss C would have explained she was being directed by who she thought was HSBC to move funds to a safe account. So I think HSBC would have realised this was a scam, explained what was happening to Miss C and so broken the spell. I do not think the

scammer would have been able to successfully coach Miss C to the extent that she did not believe HSBC when it confirmed her account had not been compromised.

I have then thought about Miss C's point that had HSBC intervened at the time she tried to make the third payment this would actually have prevented all losses as the money from payments 1 and 2 remained in her sole control in her account at bank 2 at that time. I have reviewed the chronology of the payments from HSBC to bank 2 and from bank 2 to the scammer(s). And I find her point to be fair and reasonable. She made payments 1 and 2 at 19.34hrs and 19.36hrs and she did not move any money from bank 2 until 19.51hrs. So had HSBC intervened at the time of payment 3 which was also sent at 19.36hrs Miss C would not have lost payments 1 or 2.

I have adjusted the value of the refund accordingly to include 50% of payments 1 and 2. I remain of the view Miss C should take some responsibility for her losses for the reasons I set out in the provisional decision.

Putting things right

HSBC will have to:

- refund 50% of Miss C's total payments, so 50% of £17,371
- add interest at the rate of 8% from the date of the payments to the date of settlement*

*If HSBC deducts tax from the interest element of this award, it should provide Miss C with the appropriate tax certificate so she can submit a claim to HMRC if applicable.

My final decision

I am upholding Miss C's complaint in part, HSBC UK Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 August 2023.

Rebecca Connelley
Ombudsman