

The complaint

Mr C complains that HSBC UK Bank Plc (“HSBC”) refuses to refund him money he says he lost as a result of scam.

The bank account concerned in this matter is jointly held: Mr C and Mrs C.

What happened

The circumstances of this complaint are well known to all parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In broad summary, Mr C says a scammer – purporting to be a financial adviser – duped him into making several payments from his HSBC joint-account, to an account with W (in Mr C’s name) and then onto cryptocurrency exchanges. Mr C says he believed he was making these payments in relation to a genuine cryptocurrency investment. However, he says he later discovered he had fallen victim to scam and lost all his money.

All the payments Mr C made to his account with W were payment transfers; and amounted to approximately £113,000. The payments were all made between 7 and 27 May 2022.

When this matter was brought to HSBC’s attention, it refused to refund the money Mr C says he lost. Because of this, Mr C raised a complaint which he also referred to our Service.

One of our investigators considered Mr C’s complaint and did not uphold it. Because Mr C did not accept the investigator’s findings, this matter has been passed to me to make a decision.

What I have 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.

Having done so, I agree with the conclusions reached by the investigator for reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

It is not in dispute that Mr C authorised the payments concerned. However, that is not the end of the story. HSBC has a regulatory obligation to be on the lookout for, amongst other things, unusual and out of character transactions – to protect its customers from financial harm from fraud.

27 May 2022 telephone call

Mr C had attempted to make a £18,500 payment to his account with W. Because HSBC did not process this payment, Mr C telephoned HSBC and spoke to one of its advisers on 27 May 2022. I have listened to this call carefully.

During the call, the adviser explained to Mr C, amongst other things, that his attempted £18,500 payment had been held for fraud checks. The adviser also highlighted features of various scams and asked Mr C why he wanted to make the payment. Mr C answered by saying it was for foreign currency as W had good exchange rates. This was untrue. The adviser asked whether a third-party had told Mr C to open a new account and credit it with money. Mr C answered no. This was untrue. Mr C went on to say that a personal friend introduced him to the W account as he (the friend) had dealt with foreign currency. This was untrue. The adviser asked whether a third-party had told Mr C how to answer HSBC's questions or mislead it about the purpose of the payment. Mr C answered no. This was untrue.

It should be highlighted that Mr C accepts that his answers to the adviser's questions were misleading – something he says the scammer instructed him to do.

Based on the above, I am persuaded that HSBC provided Mr C with a robust scam warning and asked him meaningful questions about the payment he wanted to make. Despite this, Mr C was determined to make the payment and instructed HSBC to do so.

I am also persuaded that Mr C was able to alleviate the concerns HSBC had about the payment by providing misleading answers to the adviser's questions. I do not take the view that it would have been reasonable for the adviser to have identified that Mr C was being misleading – particularly given Mr C provided his answers confidently, his reasons were plausible and the fact his payment was going to an account in his name which he says he had opened.

In circumstances where a customer has misled their bank about why they want to make a payment – it would not be fair of me to conclude that the bank should be liable for its failure to go further in the scam warning provided and its questioning. In my judgment, this is what has happened in Mr C's case. I find that the HSBC adviser's scam warning and questions were proportionate to the information and answers Mr C provided.

For these reasons, I am satisfied that it was reasonable for HSBC to process Mr C's £18,500 payment to W.

26 May 2022 branch visit

Mr C had attempted to make a £14,000 payment to his account with W. HSBC did not process this and required Mr C to attend a branch. Based on the evidence before me about the branch visit, I am persuaded – just like with the 27 May 2022 call – that HSBC provided Mr C with a robust scam warning and asked him meaningful questions. Moreover, Mr C accepts that his answers were misleading when he was questioned in branch – again, alleviating HSBC's concerns about the payment. Further, the payment was going to an account in Mr C's name which he says he had opened.

For these reasons, I am satisfied that it was reasonable for HSBC to process Mr C's £14,000 payment to W.

Payments prior to 26 and 27 May 2022

I have considered the other payments – prior to 26 and 27 May 2022 – Mr C made to W where there was no interaction with HSBC. Having done so, I do take the view that it could be argued that some of those payments should have flagged HSBC's systems. However, I am not persuaded that had HSBC intervened in any of those payments it would have made a difference. That is, I take the view that Mr C would have gone ahead with those payments anyway – despite HSBC's scam warnings and meaningful questions. I also take the view that Mr C would have alleviated HSBC's concerns about the payments by, likely, providing misleading answers to questions asked of him.

To assist me in reaching this conclusion, I have reflected on Mr C's branch visit on 26 May 2022, and his telephone call with HSBC on 27 May 2022. In doing so, I am persuaded that had HSBC intervened in any of the payments prior to these dates: the same outcome would have occurred. That is, despite HSBC providing scam warnings and asking meaningful questions – Mr C would have gone ahead with his payments regardless; and would have alleviated any concerns HSBC would have had about the payments due to Mr C's likely misleading answers to questions asked.

For these reasons, whilst I take the view that there is an argument to say HSBC should have intervened in Mr C's payments prior to 26 and 27 May 2022 – I do not take the view that such interventions would have made a difference in the circumstances.

Attempted payments to cryptocurrency exchanges

I can see that Mr C attempted three separate payments to three different cryptocurrency exchanges in February and March 2022. These payments were returned, so Mr C has not suffered a loss here. He says that he spoke to HSBC over the telephone about two of these attempted payments. Although I have not been provided with these alleged calls, I do not consider that they would have any bearing on the subsequent payments Mr C made to W. I say this because at best, during those alleged calls, I would have expected HSBC to block any payments to the cryptocurrency exchanges if it had concerns about them – but not block Mr C's account entirely. Therefore, I have considered Mr C's payments to W separately.

Ancillary points

I note Mr C's personal circumstances which he has put forward. However, based on the evidence before me, I cannot see that HSBC was ever made aware of Mr C's personal circumstances at or before the relevant time we are concerned with. So, I am unable to say HSBC should have done more to protect Mr C. In terms of recovery, I find that HSBC took reasonable steps to try to recover Mr C's money. However, W confirmed to HSBC that once the money had credited Mr C's W account – the funds were moved on.

In conclusion

Ultimately, banks have to balance their duty to follow their customers' payment instructions, with their duty to protect their customers from financial harm from fraud. However, if the bank's customer puts forward compelling and persuasive reasons as to why they want to make a payment which may put them at risk: then this can seriously frustrate the bank's attempts to identify fraud and protect their customer from such harm. This is what, to my mind, has happened in Mr C's case for the reasons I have already given.

Taking all the above points together – I do not find that HSBC has erred in the circumstances of this complaint. Therefore, I will not be asking it to do anything further.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint

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

Tony Massiah
Ombudsman