

The complaint

Ms S complains that HSBC UK Bank Plc ('HSBC') allowed an account to be opened and operated by a fraudster and that HSBC didn't do enough when it was notified the payments she sent to its customer were fraudulent.

What happened

Ms S is represented in this case but for ease I'll refer to Ms S throughout this decision.

Ms S says that in around February 2018 she met someone I'll refer to in this decision as O through online dating. The relationship developed and Ms S met O in person. As time went on O asked Ms S to lend him money for things like business loans, rent, an investment, and the cost of living in periods when he was setting up businesses. In 2021 Ms S pressed O to return her funds. He told her he needed to go abroad to sort out his business affairs. O then gave various excuses for not returning and then claimed to have been captured and Ms S was asked to pay a ransom.

Between 2018 and September 2021 Ms S transferred around £42,000 to O's account with HSBC.

Ms S realised she'd been the victim of a callous scam and took steps to try to recover funds. She says that HSBC, as O's bank (and so the bank that received the funds she sent to O) shouldn't have allowed O to open an account and send huge amounts of fraudulently obtained money from the account.

HSBC confirmed to Ms S that relevant documentation was provided to open the account, that before receiving her complaint it had no concerns about O's account and that no funds remained to be recovered. Ms S was unhappy and asked this service to investigate her complaint.

Our investigation so far

The investigator who considered this case didn't recommend that it be upheld. He considered HSBC's actions as the bank that received fraudulent funds under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and said that:

- The opening of the account doesn't fall within the jurisdiction of this service.
- There was nothing about the activity on O's account that would have caused HSBC concern.
- By the time HSBC was notified of the scam no funds remained in O's account to return to Ms S.

The case has been passed to me to issue a final 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.

I don't doubt that this scam had and continues to have a significant impact on Ms S. But being the victim of a scam doesn't automatically entitle her to a refund from the bank that received her money.

HSBC has signed up to the CRM Code. The CRM Code sets out what is expected of the 'Sending Firm' and 'Receiving Firm' (in this case HSBC) when payments are made or received.

In summary, the obligations for the receiving firm state that firms should:

- Take reasonable steps to prevent accounts from being used to launder the proceeds of Authorised Push Payment (APP) scams.
- Have procedures to prevent, detect and respond to the receipt of funds from APP scams; and
- Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

I've carefully considered HSBC's obligations.

HSBC has shared relevant information with our service in confidence to allow us to investigate Ms S's complaint. I'm limited as to how much information I can share with Ms S because it relates to a third-party account and is confidential. But I'd like to assure her that I've carefully reviewed everything before reaching my decision.

Complaints about receiving banks and any acts or omissions came into our jurisdiction from 31 January 2019. I've seen evidence from HSBC to show that the receiving bank account was opened prior to 31 January 2019. This means I can't comment on whether there were any failings by HSBC when the account was opened.

I've gone on to consider whether the activity on the receiving bank account ought reasonably to have caused HSBC any concern. Whilst data protection reasons mean I can't share any information with Ms S, I don't think there was anything relating to the activity on the account that should have prompted HSBC to have any concerns. I'm also mindful of the fact that Ms S made payments to O over a period of three and a half years and that by far the majority of these payments were low in value.

Finally, I've considered HSBC's actions on receipt of notification of the scam from Ms S's bank. I have seen evidence to show that by the time the sending bank reported the scam to HSBC all the funds she transferred to O had been removed. So there was nothing HSBC could have done to protect Ms S's funds or prevent her loss. I'm satisfied that once it was notified of the scam HSBC took appropriate action.

Whilst I'm sorry to disappoint Ms S, I can't reasonably hold HSBC liable for her loss.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 November 2023.

Jay Hadfield
Ombudsman