

The complaint

Mr T complains that HSBC UK Bank Plc have failed to refund £150,000 he says he lost to a safe account scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Mr T says he fell victim to a scam in June 2022 after someone called him purporting to be from HSBC. They told him his business accounts had been compromised, such that he would have to move his money to a more secure location. Over the course of six days, he transferred money from his business accounts to his personal account with HSBC, which he later warned could also be compromised.

Mr T then transferred around £150,000 over six days from his personal HSBC account to his cryptocurrency wallet held with SwissBorg, which he had opened around a year earlier. From this wallet, he converted his funds to Bitcoin and sent them to a further crypto wallet. Mr T said he realised he had been scammed when he called HSBC asking to speak to the person he was in contact with and discovered they did not work for the bank.

HSBC said it wouldn't refund the money Mr T had transferred from his personal account because the point of loss occurred from his SwissBorg account. Our investigator also didn't uphold the complaint as he didn't consider there to be enough information to establish whether HSBC could be said to have caused the loss. Mr T disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

First, I ought to make clear that this complaint is concerned only with the transactions made from Mr T's *personal* account with HSBC. I'm unable to comment on any of the transactions made from his company accounts within this decision, as these would form the subject of separate complaints brought by the relevant limited companies.

In terms of the transactions Mr T made from his personal account, I accept there was unusual activity on the account, which ought reasonably to have prompted an intervention by HSBC. But the bank's failure to intervene does not mean it is automatically liable for any loss that stems from its omission. The loss must have been *caused* by the bank's failure to intervene, but any such loss must have also been *foreseeable*. Such a determination

requires sufficient detail about the scam and the journey the funds took from the originating account and then into the hands of the scammer.

In this instance, I don't consider there to be enough persuasive evidence to demonstrate how the scam unfolded, or to adequately explain how Mr T came to transfer cryptocurrency from one wallet to another (as well as who had ultimate control of that wallet). There is no evidence of him being sent any instructions or links to another crypto wallet, for example. And despite being asked by this service, Mr T has not been able to provide a plausible explanation as to what happened to his funds and where they went from his SwissBorg account. It's not clear, for example, the extent to which Mr T might have owned or had any control over the wallet that eventually received the Bitcoin. Mr T said he felt strongly that this wasn't relevant and didn't provide any further details. But in the context of a safe account scam, it is indeed relevant as to whether his loss would've ultimately been foreseeable to HSBC.

Mr T said he transferred his money from his personal HSBC account to his SwissBorg account because he considered this to be safer. There is therefore no reasonable explanation as to why he would then need to further convert his funds to Bitcoin within his SwissBorg account, and then send it to yet another crypto wallet if he already considered his SwissBorg account a safe place to keep his funds. Taking these further steps (which ultimately led to his loss) would not be reasonably foreseeable in my judgment when the funds had already seemingly reached a safe location within his SwissBorg account.

There is also the matter of the time period in which Mr T says the scam occurred, which was over the course of six days. One of the key reasons that safe account scams are often successful is that the scammer creates a high-pressured environment, scaring the victim into thinking their money is at imminent risk of being stolen, which forces them to act in the heat of the moment without having any time to think. And it's understandable that in the heat of the moment, someone may transfer their money to a scammer without thinking the risks through if they thought they were about to lose their money. But in Mr T's case, the payments were made out of his account over the course of *six days* due to a payment limit of £25,000.

Over such a long period of time, the high-pressured environment originally created by the scammer would have naturally subsided, as he was no longer having to act in the heat of the moment and had time to think and reflect about what was happening. After a few days had passed and no money had actually been stolen, it also ought to have been apparent that there may not have been any such risk. Mr T could have easily contacted HSBC during this time to check the legitimacy of what he was being asked to do, where he would have discovered that he was being scammed. As such, I don't think his loss would be reasonably foreseeable on this basis either. Therefore, while I accept there was unusual activity on Mr T's account, I don't consider HSBC can fairly or reasonably be held liable for Mr T's loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 August 2023.

Jack Ferris
Ombudsman