

The complaint

Mr T complains that HSBC UK Bank Plc hasn't protected him from losing money he paid to one of its customers as a result of fraud.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in August 2022 Mr T paid \$13,000 from his non-HSBC account to a third-party account held with HSBC. Mr T subsequently realised he'd been scammed.

Ultimately Mr T remained unhappy when he was unable to recover his lost funds and he referred his complaint about HSBC to us. An Investigator here looked into things but Mr T remained unhappy. The case has therefore been passed to me for a decision.

I sent Mr T and HSBC my provisional decision last month explaining what I was intending to decide. Now both parties have had reasonable opportunity to comment further, I'm now ready to explain my 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.

Having done so, I've reached the same conclusions and for the same reasons as explained in my provisional decision. That is, I've decided not to uphold this complaint. I've explained why again below.

Let me say, first of all, I'm sorry to hear Mr T has been the victim of a scam. The fraudsters tricked him into a false sense of reassurance by leading him to believe he was, through his payment, entering into an agreement whereby HSBC would hold his funds and only release them to the scammer (posing at the time as a legitimate vendor) upon satisfactory inspection of the goods; but unfortunately this wasn't real but just a ploy used by the fraudsters to trick Mr T. I sympathise with the situation Mr T has consequently found himself in, and I understand why he thinks it's unfair he should bear the loss. Ultimately, however, Mr T has suffered his loss because of fraudsters. I can't reasonably ask HSBC to reimburse losses that resulted from the criminal actions of third parties unless its acts or omissions unfairly resulted in Mr T's loss. So what I have to decide is whether or not HSBC reasonably did enough to prevent, or respond to, the alleged authorised push payment (APP) fraud.

HSBC has shared relevant information with this service in confidence to allow us to discharge our investigatory functions and has provided that which is necessary for the determination of this complaint. But I'm also limited to how much of this I can share for the same reasons as HSBC. But I'd like to assure Mr T I've carefully reviewed everything before reaching my decision.

I've considered the fact alleged fraudsters in this case were able to open and operate an account with HSBC. But an account later found to have been utilised to misappropriate funds

doesn't automatically entitle the payer (victim) to a refund nor does it mean that the recipient bank unreasonably failed to prevent the loss. What I need to consider is whether at the time of opening the account HSBC ought reasonably to have known that the account being opened would later be used fraudulently. And in the circumstances of this complaint, there wasn't anything at the time that I think reasonably could've alerted HSBC that the account it was opening would later be used to misappropriate funds. So, I'm satisfied it didn't miss an opportunity to prevent the fraud when opening the account.

I've also considered whether there was anything about the activity on the recipient's account that ought to have alerted HSBC to the possibility of fraud prior to it being notified Mr T had been scammed. As pointed out by our Investigator, at a certain point in 2022, before Mr T made his payment, the recipient's account activity changed significantly. However, HSBC has received no notifications of fraud regarding the account apart from Mr T's. So I can't say there was fraudulent activity on the account prior to Mr T's payment that HSBC ought to have been obliged to have intervened in. But in any event, even if HSBC had intervened, I haven't seen anything that persuades me this would've changed things.

I've also thought about the arrival of Mr T's payment and the spending of those funds. And when assessed against the general use of the account, particularly the weeks prior, I can't say that it looked materially or sufficiently different or suspicious to warrant intervention at that point. This means I can't fairly say HSBC unreasonably missed an opportunity to prevent Mr T's loss.

I'm also satisfied that by the time HSBC was told that Mr T's payment had been made as a result of a scam, there weren't any available funds for HSBC to recover for Mr T. Unfortunately for Mr T, his funds were spent within just a matter of days of his payment. So, I'm satisfied HSBC's acts or omissions when it was notified of the fraud were not the cause of Mr T's loss.

I understand Mr T will be disappointed, and I'm really sorry he's lost this money. However, for the reasons I've explained, I don't think HSBC unreasonably missed an opportunity to either prevent the fraud or to have recovered the funds. So, I don't uphold this complaint.

My final decision

For the reasons explained, I don't 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 29 November 2023.

Neil Bridge
Ombudsman