

## The complaint

A company which I will refer to as 'C' complains that HSBC UK Bank Plc wouldn't reimburse the money which they lost due to an authorised push payment scam. They say that HSBC allowed a fraudster to open an account with it and then use the account for fraudulent purposes.

## What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in late 2022, C's accountant received instructions through emails, purportedly from senior staff of the company but actually from a scammer, to make four payments to two different payees. The accountant made the payments from C's account with HSBC. The two recipients' accounts were also with HSBC. The fourth payment was reversed but the other three went through. In total about £90,000 was paid.

The scam came to light soon after the fourth payment was made, and C contacted HSBC. Unfortunately, HSBC was only able to recover a very small amount.

C complained to HSBC who did not uphold their complaint. The bank said that it didn't do anything wrong and that it attempted to recover all the money it could, on being advised of the scam.

One of our investigators reviewed the complaint and concluded that in their opinion the complaint should be upheld. They said, in summary:

- HSBC weren't at fault for processing the payment requests. The transactions were authorised and were in line with the past activity on the account. HSBC had no reason to stop these payments when they were made.
- As regards HSBC's actions in relation to the beneficiary accounts (as the receiving bank), it missed opportunities to prevent C's losses through these accounts.

At the time the recipients' accounts were opened, there wasn't anything suspicious that should have alerted HSBC to the fact that the accounts would later be used for fraudulent purposes. However, there were subsequent times when activity was out of character with what HSBC knew about each of its customers. Some of these instances occurred before any of C's funds had been dispersed. This warranted action and review by HSBC. Had it done so and contacted its (recipient) customers to gain an understanding, its customers wouldn't have been able to give a reasonable explanation and the scam would have come to light. HSBC missed an opportunity here to help C avoid their loss. So, it is fair that the bank compensates C.

C accepted investigator's opinion, but HSBC did not. In the main it said:

- The account activities on the recipients' accounts were not unusual for the bank to have intervened. It will be more common for large sums to be received into a business account and paid out. The payments may have been relatively large but were not extraordinary that ought to have prompted the bank to intervene.
- C should assume some responsibility for their actions. There should have been appropriate checks and balances within any such commercial entity to reduce the risk of fraud taking place, but it appears that no checks were carried out. The payments were made by the accountant who is expected to check payment instructions and question when odd instructions were received. Whether or not C did enough to protect themselves is the key question, rather than whether their policy was adequate in itself.

The bank's systems would have displayed one of the digital warnings at the time when C set up the new payees. The bank can no longer ascertain what option was chosen, but assuming the payer chose the correct one (i.e. paying a bill), the warning message advised making telephone checks and examining the email address for any differences.

Therefore, at the very least, C should equally share the loss.

### **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.

HSBC says that from a legal perspective they owe no duty of care to a third party (like C) with whom they have no contractual relationship. I take on board the point HSBC makes, but whilst I must take the law into consideration, my role as an Ombudsman is to ultimately decide a complaint based on what I think is fair and reasonable in all the circumstances.

HSBC has an ongoing obligation to be alert to various risks in relation to accounts with it. Specifically, I'm mindful that it:

- must conduct their business with due skill, care and diligence;
- has a longstanding regulatory duty "*to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime*" (SYSC 3.2.6R of the Financial Conduct Authority Handbook);
- must fairly and reasonably been monitoring accounts and any payments made or received to counter various risks including anti-money laundering and preventing fraud and scams. At the material time, those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage risk, e.g. through customer due-diligence measures and the ongoing monitoring of the business relationship including through the scrutiny of transactions undertaken throughout the course of the relationship;
- must have systems in place to look out for unusual transactions or other signs that might indicate risk of fraud. This is particularly so given the increase in sophisticated fraud and scams in recent years.

The SYSC guidance I've referenced above is about systems and processes for the monitoring of accounts. But that monitoring has a purpose, and that is to be alert to and to react to various risks including concerns of fraud, scams and the misappropriation of funds.

It is a matter for HSBC as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. However, where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case HSBC could have fairly and reasonably done more.

In relation to HSBC's role as the sending bank, when the accountant set up the first new payee (of the two), in total four mis-match confirmation of payee messages were produced. It is unclear why that did not prompt an enquiry by the bank. That said, I accept that the outgoing payments from C's account weren't that unusual to conclude that they ought to have warranted bank's intervention. I also note that the disputed payments did not consume most of the funds in C's account – which might have been an indicator it was at risk of fraud.

In relation to HSBC's role as the receiving bank, it has provided relevant information to our service to allow us to investigate this. I am limited as to how much information I can share because it relates to a third-party account. But I'd like to assure C that I've carefully reviewed everything before reaching my decision.

Having reviewed the submissions, I agree with the investigator that HSBC could have done more here.

In relation to the recipient's account where the first two payments went, I see that it was a newly opened account. Since opening there were very small payments into the account and small outgoing payments, nothing substantiating the stated business in the account opening form. Then it received a large payment from abroad (not from C), which was unusual to the normal account activity. Soon after, the customer transferred all of it, mainly through multiple large payments to foreign exchange providers. These were also unusual to normal account activity. In my view, this pattern of activity: a newly opened account, receiving a large payment from abroad and immediately taken out through multiple large payments to foreign exchange providers could be an indicator of risk of fraud.

I think there was enough going on here that ought to have prompted HSBC to take a closer look at what was happening when the large payment was received or when the first (large) payment was made out of the account.

It may be, to start with, the bank's objective would have been to look out for unusual transaction going out of the accounts in order to protect its customers from possibility of fraud. But that would have given the bank an opportunity to look more closely at what was going on. Had it done so, I consider that the bank would be concerned about the mismatch between what was stated in the account opening form and what had happened subsequently on the account.

The bank says that even if it had intervened at this point and blocked this customer's account that may have prevented C's funds coming into this account later on, but the scammers would have found some other way of receiving C's funds. That is not necessarily certain but what is certain is that had the bank had acted so, C's funds would not have come into this account and C would not have lost nearly £40,000 through this account.

I consider that the situation in relation to the second recipient's account is also quite similar. It was also a newly opened account, with very small incoming and outgoing payments for a

couple of weeks, nothing substantiating the stated business in the account opening form. Then C' payment of nearly £50,000 arrived into the account, which was quite substantial to the account. Soon after, the customer transferred all of it through multiple large payments, which were also unusual to normal account activity.

So here also I agree with the investigator that there was enough going that ought to have prompted HSBC to take a closer look at what was happening at least when the first large payment was made out of the account, if not earlier. Had it done so, as in the earlier case, the bank would be concerned about the mismatch between what was stated in the account opening form and what had happened on the account subsequently.

I acknowledge that it is difficult to know for certain what would have happened had the bank intervened and questioned its customers about the source of incoming payments. However, on balance, I am not persuaded that its customers would have been able to convince the bank about the receipt of C's funds. The payments were received with hardly any activity on the accounts prior to it to substantiate the running of the stated businesses. The payments were not consistent with what was stated in the account opening form, as explained by the investigator. Further, given that the sender of the funds was also a customer of the bank, it would have been easy for the bank to verify any story given by the recipients.

Thus, I think the bank missed an opportunity here to help prevent the financial loss to C. So, it is only fair that it compensates C for the loss suffered.

In this regard, I note that on both the accounts several large payments debited after the bank was notified about the scam. These are card payments. Both the investigator and I sought clarification from the bank as to when exactly these card payments were made. i.e., before or after the notice of scam. The bank hasn't properly clarified this. In fact, its response to my enquiry suggests that these card payments happened after the scam notification. If so, it seems to me that the bank missed a further opportunity to prevent at least some losses to C.

#### *Did C act reasonably in the circumstances?*

For completeness, I've also considered whether C should bear some responsibility for their loss due to any contributory negligence.

HSBC has argued that C should have had strong internal controls to prevent them falling victim to a fraud, but they failed to do so. Therefore, it says that C should bear at least 50% of the loss.

I take on board the point HSBC makes but as it alluded to, the question here is whether it is fair to conclude that there was a contributory negligence on part of C on this occasion, rather than to question whether it ought to have had an infallible fraud prevention policy.

The scammer sent the emails to the accountant as if from the managing director and that started when both the chairman and managing director were away from work. There was nothing obvious in those emails in terms of the language and presentation that ought to have raised any suspicion. The scammer's email address had one letter different to that of managing director's genuine email address. I don't think that was something the accountant could have easily spotted.

C has told us that usually they would initially raise a purchase order for the supply of material and later when the goods and invoice from the supplier were received, they would be compared, and payments made. However, C's chairman also told us that there have been occasions in 2021 and 2022 when C had a number of building alterations and improvements where no purchase orders were raised due to the uncertainty of the work required, and

payments were made with instructions from the chairman, managing director or their general manager, by either verbal or email instructions to the accountant. He has given a couple of such examples. From what I could see, they may not be for high value payments like the one happened here, but I accept that such email requests were not completely unusual.

Further, I see that the scammer included a fictitious email thread (somehow showing genuine email addresses) that made it appear that the chairman of the company had emailed the managing director to make payments to those two recipients through the accountant.

Thus, the accountant received instructions from their managing director to make payments to certain parties and that appeared to be supported by instructions from the chairman. On the face of it, the accountant had nothing suspicious about the instructions and she wasn't of course aware that this was all a scam.

I have also considered the warning message the bank said the accountant may have been presented when they set up new payees. Having reviewed the message, I am not persuaded that it was specific to the situation here. That warning refers to a situation where the payer received instructions from an external person asking them to make a payment whereas here the instructions came from the managing director (or so the accountant thought). In any case the bank is not able to confirm whether this was indeed the message that was presented.

Overall, I don't think that the accountant acted unreasonably by proceeding to make the payments as instructed. In the circumstances, I can't fairly conclude that C should share the loss with the bank as proposed by it.

### **Putting things right**

C paid a total of £89,120. I understand that HSBC could recover £9. This means HSBC should reimburse £89,111 to C.

It should also pay interest on this sum. The funds were lost from a business current account, which earned little interest. But the relevant question is the opportunity cost of the lost funds to C. In this case, I cannot be certain about the cost to C of being deprived of the money because it might have used the funds in a variety of ways. It is however clear to see that this was a large sum of money, and the loss has had a big impact on the company. In the circumstances, without any compelling reason to depart from our usual approach, I consider it fair and reasonable that HSBC pays C simple interest at 8% p.a. on the £89,111.

The interest should be paid from the date the bank was notified of the scam (which I believe was 7 November 2022). It shouldn't be paid from 4 November as suggested by the investigator.

### **My final decision**

My final decision is that I uphold the complaint. In full and final settlement of it, HSBC UK Bank Plc should pay £89,111 to C together with simple interest at 8% p.a. Interest should be paid from the date the bank was notified of the scam to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 9 April 2024.

Raj Varadarajan  
**Ombudsman**