

The complaint

Mrs W and the estate of Mr W complain that HSBC UK Bank Plc (“HSBC”) didn’t protect them from losing money paid to one of HSBC’s 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, between May and August 2022 Mrs W and the late Mr W made ten payments from their third-party bank account, which they held jointly, to an account held with HSBC for what they thought was a legitimate investment. The payments leaving Mrs W’s and the late Mr W’s joint account totalled €953,817.46 and landed in the HSBC recipient account as £792,924.73.

Mrs W and the late Mr W subsequently realised they’d been scammed and got in touch with HSBC. Ultimately, agreement about how to resolve things couldn’t be reached, so Mrs W and the late Mr W referred their complaint about HSBC to us. Mr W has very sadly passed away since this time, and the complaint is now pursued on his estate’s behalf by its executors. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a decision.

I sent the parties my provisional decision on 7 June 2024 explaining what I was minded to conclude and why and that further clarification on the precise redress might be appropriate prior to my final decision. The parties responded to my provisional decision, with Mrs W and the estate of Mr W essentially accepting my provisional conclusions, and HSBC engaging by providing some preliminary redress calculations.

I subsequently emailed the parties explaining the precise redress award I considered appropriate and why. Mrs W and the estate of Mrs W said they would settle on this basis. But HSBC, despite engaging, hasn’t confirmed its acceptance to this within the time I allowed. It wouldn’t be fair for me to delay my final decision any further since I understand Mrs W is extremely unwell, and I’m satisfied all parties have had fair opportunity to respond. So it’s now appropriate for me to explain my final decision without further delay.

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 as explained in my provisional decision and for the same reasons, including on appropriate redress as subsequently clarified to the parties. I’ve explained my reasons again below.

It’s common ground Mrs W and the late Mr W were scammed. So, first, let me say how very sorry I am to hear about this, of Mrs W’s current circumstances, and the very sad recent passing of Mr W. Mrs W and her family have my heartfelt sympathy. I understand why they think it’s unfair they should bear this loss, and why they’ve been doing everything to try to recover all the money they can. Ultimately, however, this situation was caused in the first

instance by a fraudster. And I can't reasonably ask HSBC to reimburse loss that resulted from the criminal actions of a third party unless its acts or omissions unfairly resulted in the loss. So, what I have to decide is whether HSBC reasonably did enough to prevent, and respond to, the alleged authorised push payment (APP) fraud. HSBC should take reasonable steps to ensure its accounts aren't used to further financial crime or misappropriate funds. And if HSBC's acts or omissions in this regard resulted in loss to Mrs W and the estate of Mr W, then I'd consider it fair and reasonable for HSBC to put this right.

Account opening

I appreciate Mrs W and the estate of Mr W may feel HSBC should refund their loss as it allowed a fraudster to open and operate an account. 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, I'm satisfied that HSBC correctly followed its account opening procedures, carried out checks to verify the identity of the named account holder and did its due diligence when opening the recipient account. 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 Mrs W's and the estate of Mr W's loss when opening the account.

Account activity

HSBC inhibited its customer's account in August 2022 due to the account activity. I've considered whether there was anything that reasonably ought to have alerted HSBC to the possibility of fraud sooner than this. And in this case, I think there was. I don't think there was any account activity from the time the account was opened, up until Mrs W's and the late Mr W's first payment to the fraudster, that ought reasonably to have stood out to HSBC as unusual or suspicious. And I also don't think there was anything sufficiently unusual or suspicious about the recipient account from the time of Mrs W's and the late Mr W's first payment, up until before their third payment, whereby I could reasonably say HSBC ought to have done anything materially differently at that point. However, when Mrs W's and the late Mr W's third payment credited the account for £82,911.83 on 7 July 2022, I think at this point there were several factors that reasonably ought to have concerned HSBC about its customer's account activity, and that by this point HSBC should've had eyes on the account before allowing further funds to leave.

By now, the three credits received from Mrs W and the late Mr W already totalled £249,341.25. These three credits were received within the space of less than a month and a half, and already exceeded the expected annual turnover that HSBC's customer had declared to it. Both the second and third credits had payment details indicating they were for corporate bonds, and this didn't align with what HSBC might expect given the details they held about its customer's account. And, already, the first and second credits had been spent by HSBC's customer quickly enough, in my view, to warrant attention. I also note that, on the same day as the third credit was received, HSBC noted concerns about the accuracy of its customer's declared date of birth. Given all these factors, I'm persuaded there was enough at this point, on 7 July 2022, such that I would reasonably expect HSBC to be materially concerned.

So I've thought carefully about what I think most likely would have happened, if HSBC had acted at this earlier point. Where I can't be sure about something like this, I need to make my decision based on the balance of probabilities – in other words, based on what I think most

likely would have happened, taking into account all the available evidence and arguments. And, in this particular case, I'm persuaded it's most likely that had HSBC acted appropriately on 7 July 2022 as I think it should have, the loss of Mrs W's and the late Mr W's third payment (and onwards) would have been avoided. I say this because:

- HSBC inhibited its customer's account on 10 August 2022, allowing no more funds to be spent from it (apart from £124.42 for bank charges). HSBC asked its customer for documentation to prove their entitlement to the credits, but it wasn't satisfied by what its customer provided about this, which is why it stopped further funds leaving the account. I'm aware of no persuasive reason why – if HSBC had done this not on 10 August 2022 but instead on 7 July 2022, as I think it ought to have done – its customer wouldn't have responded to HSBC's concerns and queries in materially the same way (which HSBC rightly wasn't satisfied with in August 2022). The 'proof of entitlement' evidence HSBC was provided by its customer indicated Mrs W's and the late Mr W's credits were for a "*re fit / agreed contract*". But, as I've already said, the second and third credits had payment details indicating they were for corporate bonds. So, I think it's most likely that had HSBC taken the action it actually took, but sooner as I've said, the overall outcome, in terms of it not being satisfied everything was okay, would have been the same, but, crucially, the account would have been inhibited sooner.
- HSBC's notes indicate that in August 2022 it sought to contact the sending bank to confirm whether certain credits received from Mrs W and the late Mr W were genuine, and whether the beneficiary was correct. I've not seen evidence detailing more precise details than this. But I note that HSBC continued to inhibit the account, so I'm satisfied anything HSBC may or may not have been told by the sending bank didn't sufficiently allay its concerns. But bearing in mind what HSBC knew about its customer, the account and its activity, I think it really ought to have asked the sending bank not only whether the credits were genuine and for the right beneficiary, but specifically what the purpose of the payments was. Had HSBC done so, as I think it should have, it's likely the stated purpose would have aligned with corporate bonds, and not what its customer was telling it. So, I think it's most likely that had HSBC done what it should have done on 7 July 2022, not only would the account have been inhibited at that point (and not in August 2022), but the scam would also have been uncovered. I say this because HSBC would then have had serious concerns about the account (as it did in August 2022) so as to not allow further funds to leave the account, and I think appropriate interaction with the sending bank would have likely led Mrs W and the late Mr W to become sufficiently concerned to do further research, in which case I think it's most likely they would then have realised the email Mr W had from the fraudster about the alleged investment, aligned to a clone investment scam the FCA published a warning about in May 2022.

I'm therefore persuaded that HSBC failed to act fairly and reasonably in this case. But that, had it done so, it's most likely Mrs W's and the late Mr W's third credit to its customer would have been fully recoverable, and they wouldn't have made any further payments.

Should Mrs W and the estate of Mr W bear any responsibility for their loss?

I've thought about whether Mrs W and the late Mr W should bear some responsibility for their loss by way of contributory negligence (which might justify a reduction in compensation). This isn't an easy message to give, given Mrs W's circumstances and the very sad recent passing of Mr W, and I'm really sorry. I appreciate they found the scam convincing. However, I note the FCA had published a warning about this very clone investment scam in May 2022. I also think the rates of return the fraudster presented looked too good to be true. So – and given the sheer amount of money Mrs W and the late Mr W

thought they were investing – I don't think it's unfair to say Mrs W and the late Mr W weren't as careful with their money as I'd reasonably expect. And I think if they'd researched things as well as I'd reasonably expect in these circumstances, they likely would have realised the promised rates of return didn't look right, that the website the fraudster referenced in his email didn't align with the genuine company's domain, and they could very possibly have seen the FCA warning about this very scam. I don't think it would be fair for me to ignore this. And, in these circumstances, I think it's fair that Mrs W and the estate of Mr W share equal responsibility (excluding any amount already recovered, please see below) with HSBC for the loss of the third payment onwards.

Putting things right

I've explained why I'm persuaded that had HSBC done what it reasonably ought to have done, the third credit would have been recoverable, and Mrs W and the late Mr W wouldn't have made further payments after that – but that Mrs W and the estate of Mr W should share equal responsibility (excluding any amount already recovered) for this loss.

I'm aware HSBC refunded to Mrs W £57,989.35 in February 2024 as a result of funds it managed to recover from its customer's account. This comprised an amount of £53,455.18 plus interest.

I've therefore decided that fair compensation would be for HSBC to pay Mrs W and the estate of Mr W:

- £41,455.92 (half of the third credit which landed in the recipient account, which I think ought reasonably to have been recovered if HSBC had done what it should have); plus
- Interest on this amount, to compensate Mrs W and the estate of Mr W for having been deprived of this money, calculated at 8% simple per year from 1 August 2022 to the date of settlement. I think 1 August 2022 is a fair date because there might reasonably have been a delay in HSBC being able to return the £41,455.92, and I don't think this date is unreasonable; plus
- €296,563.07 (this is half the total of payments four to ten in euros – which I think likely wouldn't have been made if HSBC had done what it should have – with the euro equivalent of what HSBC already refunded to Mrs W in February 2024 excluding interest taken off the total of payments four to ten before that amount is halved). The amount refunded to Mrs W in February 2024 excluding interest was £53,455.18. This amount converts to €62,531.87 applying an exchange rate of 1 GBP = 1.1698 EUR, a fair rate for 22 February 2024 when I understand Mrs W received the funds. So the €296,563.07 figure is calculated by taking the total of payments four to ten (€655,658), subtracting €62,531.87 from this amount, and then halving it; plus
- Interest on this amount, to compensate Mrs W and the estate of Mr W for having been deprived of this money, calculated at 8% simple per year from the date the payments were made to the date of settlement.

I've also decided that HSBC should pay Mrs W £500 for distress and inconvenience. I've thought carefully about this amount. The fraudster was the root cause of things. I think Mrs W and the estate of Mr W would still have lost the first two payments (which landed in the fraudster's account totalling £166,429.42), even if HSBC had acted appropriately. And, as I've said, I think it's fair that Mrs W and the estate of Mr W shares equal responsibility with

HSBC for the loss of the payments three to ten (excluding any amount already recovered). But the fact remains, HSBC really ought to have done better here. And by not doing so, it has made things materially worse – these were large sums, the loss of which would have exacerbated any existing worry and health concerns on Mrs W's part, for which I'm satisfied an award of £500 is appropriate.

My final decision

For the reasons explained, I uphold this complaint in part and I direct HSBC UK Bank Plc to pay Mrs W and the estate of Mr W:

- £41,455.92; plus
- Interest on this amount calculated at 8% simple per year from 1 August 2022 to the date of settlement (if HSBC deducts tax from this interest, it should provide Mrs W and the estate of Mr W with the appropriate tax deduction certificate); plus
- €296,563.07; plus
- Interest on this amount calculated at 8% simple per year from the date the payments were made to the date of settlement (if HSBC deducts tax from this interest, it should provide Mrs W and the estate of Mr W with the appropriate tax deduction certificate); plus
- £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and the estate of Mr W to accept or reject my decision before 2 August 2024.

Neil Bridge
Ombudsman