

## The complaint

Mr B and Ms F are unhappy that HSBC UK Bank Plc won't reimburse them for the money they lost when they fell victim to a scam.

## What happened

Mr B and Ms F fell victim to a safe account scam. After their details were compromised via a phishing text, they were contacted by individuals claiming to be from Mr B's credit card provider, saying his account had been compromised. This was followed by a call claiming to be from HSBC.

Mr B and Ms F were told that their HSBC account was also at risk and that they needed to move their money into an account Mr B held with a third party 'R' and then from there on to a new 'safe' account that was being set up for them. Unfortunately, and unknown to them at the time, they were actually speaking with fraudsters.

Believing that they were genuinely dealing with legitimate banking institutions, Mr B and Ms F ended up moving significant funds from their account with HSBC into Mr B's account with R, and then on to the scammers. Over the course of one day Mr B and Ms F made payments totalling £25,000 from their HSBC account to R, one of these payments was a transfer, the rest were card payments. Mr B and Ms F were told that was the daily limit they could pay out of their HSBC account and that they would be called back the next day to move the rest of their money to safety. When they missed a call the next day, they called HSBC – getting through to legitimate representatives of the bank – and discovered they had been scammed.

HSBC looked into what had happened but ultimately said it did not think it should be held responsible for Mr B and Ms F's loss. It said the payments were not unusual enough to be flagged as suspicious by its systems, and that in any case the payments had been made to an account in Mr B's name at R, before being passed on to the scammers. So HSBC felt that R should bear responsibility for the financial loss.

Mr B and Ms F were unhappy with HSBC's response and so referred their complaint to our service.

One of our Investigators looked into what had happened, and they felt that HSBC should have stepped in to question Mr B and Ms F about the first payment made relating to the scam – which was for £10,000. They felt that, if HSBC had done so, then the scam would have been uncovered and Mr B and Ms F's loss could have been prevented. So they recommended that HSBC refund the scam payments, plus some interest.

Mr B and Ms F accepted the Investigator's findings, HSBC did not. It maintains that the payments were not unusual enough to have flagged as suspicious – particularly given that the first payment was made via open banking – and that the loss was ultimately made from the account held with R and so feels they should bear responsibility for the loss here.

As no agreement could be reached, this case has been passed to me for a 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 conclusion as our Investigator, and for the same reasons.

It's not disputed that Mr B and Ms F authorised the payments that are the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr B and Ms F are responsible for them. That remains the case even though they were the unfortunate victims of a scam.

Because of this, Mr B and Ms F are not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr B and Ms F, or whether it should have done more than it did.

Mr B and Miss F's HSBC account was one they used regularly for day-to-day expenses, so there was a significant transaction history for HSBC to compare any new payments to. And Mr B and Ms F did, on occasion, make high value payments and transfers from their account, although many of these higher value payments do appear to have been to credit cards. There were also regular payments to Mr B's account with R, of up to £1,500 at a time. I also acknowledge that the payments in dispute here were made to an account with R in Mr B's own name, and so would have appeared less risky overall to HSBC. However, just because a payment is to an account in the consumer's own name, or is made via open banking, that does not mean it bears no risk at all, and I would still expect HSBC to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks or e-money providers, and then on to a scammer – is increasingly a feature of this kind of scam. And I would expect HSBC to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

And, even in light of the account history, the very first scam payment made was for such a high amount – and an amount that was not usual for Mr B and Ms F – that I think it should have flagged as potentially suspicious to HSBC, despite the fact that it was a payment to an existing payee, and the account it was being paid into was in Mr B's name.

Had HSBC done this, then I think it is more likely than not that the scam would have been uncovered. Mr B and Ms F don't appear to have been given a cover story to use by the scammer, so I think that if HSBC had asked what the payment was for then they would have been open and honest. And what they would likely have told HSBC about what they were doing should have rung alarm bells for HSBC, given that these types of scam are becoming increasingly common. HSBC could then have explained the risks Mr B and Ms F were exposing themselves to, and I consider it likely that the spell of the scam would have been

broken and Mr B and Ms F wouldn't have proceeded with the payments. So I think HSBC could have prevented the losses they incurred.

HSBC has said that R should bear responsibility for some or all of the loss here, but we have not been asked to consider a complaint against R. I can only consider the complaints put before me, and given that I'm satisfied HSBC could have prevented these payments if it had stepped in to question what was happening at a much earlier stage, I'm satisfied that it is reasonable for HSBC to bear responsibility for the loss resulting from these payments.

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mr B and Ms F should bear some responsibility for their loss. It appears that HSBC's phone number had been spoofed by the scammers, so the call they received appeared to be coming from HSBC. Mr B and Ms F have also said that the person they spoke to knew personal details about them, further convincing them that the call was legitimate. And I've not seen anything else that I think should have flagged to Mr B and Ms F that they weren't dealing with a legitimate representative of HSBC.

Given this background, and the enormous pressure Mr B and Ms F were under to do what they were told by the scammers to keep their money safe, I can see why they took the actions they did. So I don't think they were partly to blame for what happened. It follows that I don't consider it fair to say Mr B and Ms F should bear responsibility for some of the loss here.

I've also thought about whether HSBC could have done more to recover the funds after Mr B and Ms F reported the fraud. I'm satisfied that HSBC could not have done more here. The money had been transferred to Mr B's own account with R before the funds were subsequently transferred on to the scammer. So while HSBC had an obligation to notify R of what had happened, it wouldn't have the same obligations as the bank responsible for the eventual transfer to the scammer's account. And in any case, the funds were moved on from the account with R before Mr B and Ms F realised they had been scammed and reported the scam to HSBC, so there would have been no funds to recover by that stage.

So, in summary, I consider that HSBC could have done more to protect Mr B and Ms F from the risk of financial harm. Had HSBC contacted them directly and asked some open questions about the first payment they tried to make relating to this scam, I'm persuaded it is more likely than not the scam would have come to light, and Mr B and Ms F wouldn't have lost out on the funds they then went on to transfer.

So I consider it fair and reasonable for HSBC to refund the payments made relating to this scam, along with interest at our standard compensatory rate of 8%. HSBC has also paid Mr B and Ms F £50 to recognise some delays in the complaint process, and I consider that to have been fair compensation in the circumstances.

### **Putting things right**

To resolve this complaint HSBC should:

- Refund the £25,000 lost to the scam
- Pay 8% simple interest per annum on this amount, calculated from the date of the payments until this complaint is settled.

### **My final decision**

I uphold this complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms F to accept or reject my decision before 4 April 2024.

Sophie Mitchell  
**Ombudsman**