

The complaint

Ms H is unhappy that HSBC UK Bank Plc failed to refund her money that she lost as a result of a fraud.

What happened

In February 2020 Ms H was looking for accommodation online for a trip abroad. She found an accommodation she liked and had seen it across numerous third-party online booking platforms with very good reviews. As only one of the third-party platforms showed availability for the time she wished to travel, Ms H contacted the owner via a messaging system within that platform.

Ms H then says that she suddenly received a private email from the advertiser from the platform she'd originally contacted them through. This requested confirmation of the number of guests and dates of travel. Once Ms H confirmed these, she then received an email from what appeared to be a well-known and reputable accommodation booking platform requesting payment.

On 4 February 2020 Ms H transferred £1425.35 to the account instructed in the email received. But when she'd not received confirmation of the payment, she contacted the genuine third-party business with which she thought she'd made a reservation. Unfortunately, this was the point at which Ms H discovered that she'd been defrauded as the genuine business confirmed no such reservation existed.

Ms H says that she attempted to contact the bank the same day, but due to the emotional impact of the discovery couldn't remember her telephone banking details. She therefore says she had to wait until the following Monday (10 February 2021) to go into the branch; when it was next open.

Ms H says that following raising her claim she was frequently provided confusing and conflicting messaging from the bank including being originally informed by a representative of the bank that she'd receive her money back.

HSBC eventually looked into Ms H's claim but decided not to reimburse the funds as she'd authorised the transaction herself and failed to use the genuine website where the accommodation was listed to make a secure payment. It did however acknowledge that Ms H was given incorrect information when reporting the incident. It paid £150 as a gesture of goodwill and by way of apology for this. HSBC added that it had informed the beneficiary bank that the funds had originated from fraud.

Ms H remained unhappy with HSBC's decision to not reimburse the funds lost, so she referred her complaint to our service. An Investigator considered the evidence provided by both parties but felt that HSBC had acted fairly. He concluded:

- The payment didn't appear suspicious or uncharacteristic when comparing it to Ms H's usual account activity. He therefore felt that HSBC wouldn't have been expected to intervene in the payment or question its legitimacy.

- The payment didn't clear the balance on the account – which tends to be a sign of potential fraud.
- The way in which Ms H was contacted by the fraudsters outside of the legitimate platform where the listing was found should have alerted suspicion. He felt that this should have prompted Ms H to carry out further checks to establish the legitimacy of the email received.
- Ms H failed to heed warnings listed on the legitimate third-party website that told users to pay for accommodation through their secure platform to ensure the payment reached the accommodation's host.
- HSBC paid £150 in compensation for the errors in information provided to Ms H after she'd raised her claim. The Investigator felt that this was fair when considering the impact caused by this incorrect information being provided.

Ms H remained unhappy with the assessment provided by the Investigator. She said that HSBC had failed to respond to her claim after numerous attempts to register it. She was also unhappy with the erroneous information it provided when it told her it would refund the money within 24 hours. This caused her significant distress as she informed her travelling companions she'd paid the money with that this was the case; later to find out it wasn't true. She felt that HSBC should've reimbursed the funds as a gesture of goodwill to reflect this.

As Ms H disagreed with the Investigator's assessment, the matter has now been passed to me to make a 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.

It is common ground that Ms H authorised the payment of £1,425.35. She was duped by the fraudsters into instructing her bank to transfer that sum to the international account held by a third-party bank. They deceived her into thinking she was paying for a genuine rental accommodation she'd found through a reputable third-party platform.

I accept that this was an 'authorised payment' even though Ms H was the victim of a sophisticated fraud. She used her security credentials to request the payment. So, although she did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms H is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Having reviewed Ms H's account statements and considering the amount paid, I don't find that the amount appeared to be so unusual or out of character that HSBC should have intervened in the payment and questioned its legitimacy.

Firstly, I feel it important to acknowledge that HSBC, and other banking providers, process a large number of payments at any given time. To intercept and question all payments of, or around, the value paid in the circumstances of this complaint would be logistically impractical and therefore unreasonable to expect it to do so. It would also likely burden customers who are making genuine payments intended for legitimate purposes. So, I have to weigh up what is reasonable in the circumstances, and while the amount is no doubt considerable to Ms H, I don't think it would've stood out given the wider circumstances. I say this as it isn't particularly uncommon for a customer to make an occasional higher value payment for goods and services such as holidays and higher value goods.

I've also noted that Ms H had made payments of a similar and higher value in the six-months prior to the fraud payment being made. This would have meant that it didn't appear particularly unusual when considering Ms H's normal account activity for her to make the occasional higher payment.

Fraud payments also tend to have certain characteristics that I'd reasonably expect a business to pick up on. This payment was to a new payee and an international payment; so, it does bear some of these characteristics. But it didn't clear Ms H's balance and—as I've already touched upon—didn't seem particularly uncharacteristic of her regular account activity.

As well as monitoring unusual account activity, HSBC ought reasonably to attempt to recover funds that its customers have lost as a result of a fraud. Here, HSBC has highlighted that it did contact the beneficiary bank to inform it of the fraud. It's highlighted that international banks don't tend to return fraudulent funds as they aren't bound by the same rules and good practice regulated UK financial services are.

While I've not seen any evidence that HSBC contacted the beneficiary bank, I have no reason to disbelieve that it did. Nevertheless, I'm unable to assess if HSBC's contact would have made a difference in this complaint as the beneficiary account falls outside of the UK's territory. But experience in these types of organised and sophisticated frauds leads me to conclude that it's more likely than not that the funds would have been removed from the account immediately or near-after they were deposited. I say this as fraudsters tend to be adept in business practice and are alive to the fact that funds can be frozen and removed when detected as fraudulent.

Overall, I'm satisfied HSBC has met its obligations when not intercepting the payment and that even had HSBC swiftly contacted the beneficiary bank that it likely wouldn't have made a difference here.

Ms H has made submission that HSBC should refund the payment as a gesture of goodwill after it gave her incorrect information that it would refund the payment within 24 hours following her claim. While I appreciate Ms H's stance on this, it's not within our service's remit to tell a business what to offer in goodwill; that is a commercial decision for the bank to make. Our role is to ensure it fulfilled its regulatory obligations and to decide on what is fair and reasonable in the circumstances. And as HSBC has fulfilled these obligations, it would be unreasonable for our service to direct it to pay that money back to her.

Having said that, our service can consider any errors made and make an award for the impact of those errors. Here, HSBC has admitted to giving Ms H incorrect information regarding her claim. And in recognition of this it's awarded her £150 in compensation.

From reviewing the evidence Ms H has provided our service, I think it's likely that there were some delays in HSBC dealing with her claim. It also been acknowledged that she was provided incorrect information when making her claim, which gave her false hope that she'd receive the money back. And Ms H has evidenced that she relayed this information to companions that were contributing toward the cost of the accommodation. This no doubt caused her embarrassment, distress and inconvenience. But had these errors not occurred, I don't think it would have ultimately led to her being refunded the funds lost. And I think the £150 HSBC has offered is reasonable when considering the emotional impact the errors have caused.

While I know Ms H will be disappointed with the outcome of this complaint, I find that HSBC has been fair and reasonable in dealing with Ms H's concerns. I'll therefore not be directing it to take any further action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 21 January 2022.

Stephen Westlake
Ombudsman