

The complaint

Mr M is unhappy that HSBC UK Bank Plc didn't do more to prevent him from falling victim to a fraud.

What happened

Mr M is a sole trader. In January 2021 he received an email from one of his regular suppliers, based abroad, asking for payment of an invoice. The email requested payment of £24,235.97 to a new account Mr M hadn't paid before.

Mr M, suspicious to reasons he was being asked to pay a new account, probed the supplier via a series of email messages. These were exchanged with various members of staff he was familiar with. Eventually, Mr M was persuaded that the request was genuine and went ahead with the payment.

Unfortunately, it later transpired that Mr M's genuine supplier's email address had been hacked and he had in fact been corresponding with a fraudster.

Mr M reported the fraud to HSBC. It attempted to recover the funds from the beneficiary account provider but was informed that no funds remained in the account. HSBC incorrectly informed Mr M that the funds may, or would be, returned despite it already knowing that no funds remained in the account. It informed Mr M of this error and paid £400 in compensation for the distress and inconvenience caused.

HSBC responded to Mr M's claim stating that it was unable to reimburse the funds lost. It pointed out that Mr M had authorised the payment and it'd therefore fulfilled its legal obligation to process the payment.

Mr M remained unhappy with HSBC's response, so he came to our service to look into things again.

An Investigator considered the evidence provided by both parties but decided that HSBC hadn't made an error. He said that the transaction didn't appear unusual or out of character as Mr M made a similar sized payment to his supplier six months prior to the disputed payment. He also felt that this followed a similar pattern of payments on his account, making it less suspicious.

As the Investigator found that the payment wasn't suspicious, he felt that HSBC's lack of intervention in the payment wasn't unreasonable. He therefore found that HSBC shouldn't be held liable for Mr M's loss.

Mr M disagreed with the Investigator's findings. He said:

- He remained unhappy that HSBC provided wrong information regarding the recall of funds leading him to provide incorrect information to his supplier.
- The fraudster had used different names of genuine employees at the company, making it seem very convincing.

- He wanted HSBC to refund at least 50% of the loss considering the circumstances.

As Mr M disagreed with the Investigator's view, the matter was passed to me to make a decision.

On 8 April 2022 I issued a provisional decision setting out that I was minded to uphold the complaint. My provisional findings were as follows:

"In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account.

Here, it is common ground that Mr M authorised the payment in dispute and would be held liable for it in the first instance. But that is not the end of the story.

HSBC has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customer's accounts safe. This includes, amongst other things, identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate a consumer is at risk of financial harm, such as unusual or out of character transactions.

Was the payment out of character?

Here, Mr M had transferred a significant sum from his account. This was going to an account Mr M hadn't paid before and was an international payment.

Having reviewed Mr M's statements, I'm persuaded that this payment was out of character and unusual when comparing it to Mr M's normal account activity. Mr M seldom made payments of this value from his account. And the only payment over £10,000 made from his account was six-months prior to the payment in dispute.

HSBC has provided comment on this prior to submission of my provisional findings. It's said:

- *Requirement to demonstrate if a payment is characteristic for an account prior to preceding with the transaction in real time wouldn't be realistic and would disrupt many genuine customer's journeys.*
- *This is particularly important on business accounts where there would be an expectation of larger payments to pay invoices. It said that it was mindful of the potential legal liability on its part should it unnecessarily delay these payments.*
- *The payment demonstrated a similar pattern of transactions in that Mr M was regularly transacting with his supplier in a similar pattern to the payment in dispute.*

I've considered these points carefully, but respectfully disagree with HSBC regarding them.

As I've already highlighted above, HSBC has a regulatory duty to be on the lookout for unusual or out of character transactions and identify where a customer may be at risk of fraud or financial harm. HSBC has received a number of assessments from this service outlining these obligations and the sources from which they come from. These obligations aren't limited to personal accounts.

Nevertheless, Mr M was a sole trader. His account didn't reflect that of a larger business regularly conducting substantial business transactions. So, I don't think HSBC's point stands in this regard. Mr M made occasional higher value transactions, but rarely did he make bank transfers for substantial sums such as the one subject to this complaint.

I also don't find that the pattern of payments supports HSBC's argument. Mr M had made a similar sized payment to the supplier six-months prior to the disputed payment, but this was to the regular account he'd paid the supplier to over a number of years. This payment was to a new payee he'd never paid before and was for a substantial sum, which was uncommon for the account.

For the above reasons, I'm minded to say that the transactions were unusual and out of character for the account. And so it follows that I find HSBC should have intervened in the payment and checked its legitimacy.

Would intervention have made a difference?

Frauds such as this are commonplace and well known amongst fraud and banking professionals. Commonly referred to as email intercept frauds, businesses are regularly subjected to hacks whereby their emails are compromised.

Taking this into consideration, HSBC would have been aware of such frauds and the way in which they are committed.

The circumstances surrounding this complaint display common features for these types of fraud. Mr M was contacted by a business via email he was genuinely transacting with and was asked to pay an invoice to a new bank account. Had HSBC been aware of this, I think it's likely that it would have made Mr M aware of the common features associated with these types of fraud.

This likely would have either alerted Mr M to the minor, unnoticeable change in the email address, or prompted him to contact the supplier via another contact method to check its legitimacy. I think either of these actions would have likely broken the spell of the fraud and prevented the payments from being made.

Mr M was already suspicious of the change of bank account and would likely have only needed to be made aware of the common features of these frauds in order to uncover it. And so it follows that HSBC likely could have prevented the fraud and subsequently Mr M's losses.

Should Mr M bear some responsibility for the loss?

HSBC has made submission that there are valid concerns in respect of contributory negligence considering that Mr M made the payments without taking adequate steps to address his initial concerns. It hasn't specified in more detail what further actions it thinks Mr M should have taken, but I'll address this point anyway.

Mr M has informed our service that he did have concerns regarding the request when it was initially made. He said that he'd always paid the supplier through the same account over a number of years, and so the request was out of character. But Mr M did act upon these suspicions and they did prevent him from initially making the payment.

Mr M thought that he was corresponding with the legitimate staff members he regularly corresponds with. He says he was persuaded by the fact that the email address was displayed as the employee's name—which was normal; the language used in the email was in line with what he'd expect; and the invoice provided appeared genuine. But Mr M was unhappy he was being instructed to make payment to a new account.

Having looked at the email chain between Mr M and the supplier, he protests on a number of

occasions to paying the new account and challenges the reason why the supplier was making this request. However, Mr M was provided with a reasonable explanation regarding currency exchange rates and losses caused to the business from payments made to their previous account. The supplier also copied into the email the other members of staff associated with the business that Mr M was familiar with. And these other known members of staff confirmed the request made.

It is also important to consider that the genuine supplier's email address had been hacked by the fraudster. This allowed the fraudster to analyse the language used by the genuine supplier, access legitimate documentation associated with the business and mimic the way the email was presented to Mr M. The combination of these factors allowed for a sophisticated and persuasive fraud.

There is no evidence that has been provided to suggest Mr M is knowledgeable in fraud. I therefore find it reasonable that he was unaware of tactics used by fraudsters and the mechanisms to mitigate these. He challenged the request thinking he was talking to the legitimate supplier and was provided with a reasonable excuse by more than one member of staff that he was familiar with.

For the above reasons, I find it unreasonable to conclude that Mr M was negligent and therefore partially responsible for the loss.'

Mr M agreed with the finding made in the provisional decision, but HSBC asked for more time to consider the findings. Despite an extension to allow HSBC to respond, it didn't. It also failed to provide any further requests for extension or give any reasonable explanation for delay. I've therefore gone on to issue my 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.

As no further comment has been made regarding the findings made, I don't intend to depart from the findings I've issued in my provisional decision above.

Putting things right

HSBC should now go ahead and refund the money Mr M has lost. And as he, and the operations of his business, were deprived of those funds, it should also pay interest from the date the payment was made to the date of settlement.

My final decision

For the reasons I've given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Pay Mr M the £24,235.97 lost
- Pay interest on this amount at 8% simple per annum from the date the payment was made to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2022.

Stephen Westlake
Ombudsman