

The complaint

N is a nursery school that fell victim to what's commonly known as an invoice intercept scam. It complains that HSBC UK Bank Plc hasn't refunded its loss to that scam.

What happened

The background to this complaint is well-known to both parties and so I won't set out extensive detail here. The relevant points are:

- N was engaged in legitimate contact with a supplier about works being carried out on site. An invoice was expected.
- Fraudsters managed to hack into N's email system and began to send fraudulent messages.
- The fraudsters contacted N's treasurer, posing as the head of the nursery, and instructed him to make a payment of £7,200 to a specified payee. An invoice was included along with bank details.
- The treasurer went to make the payment but discovered the supplier referred to in the emails wasn't registered with Companies House, and the recipient account was a personal one.
- The treasurer flagged these points to the nursery manager, asking if she was sure the payment was legitimate.
- The fraudster received this message and tailored a reply, confirming payment should go ahead, again posing as the nursery manager.
- The treasurer made the payment, reassured by the confirmation from what appeared to be the nursery manager. Across all correspondence, the genuine nursery manager's email address had been used.
- The scam was reported the day after payment, when the nursery manager realised what had happened.
- HSBC didn't seek to recover the money for a few weeks, where it ought to have done so immediately. It's paid £325 in compensation for this delay in addition to problems experienced by N in getting through on HSBC's busy phonelines. But none of the money was recovered from the recipient account.
- HSBC is a signatory to the Lending Standards Board's CRM Code. HSBC considered its obligations to refund N but declined to do so. It said the treasurer was at fault for not doing more to check the payee. HSBC said the payment was made on N's behalf without a reasonable basis of belief, an exception to reimbursement under the Code.
- N referred its complaint to our service and one of our investigator's upheld it. She felt the treasurer did have a reasonable basis for belief, taking into account all the circumstances of the scam. And so she found HSBC hadn't acted fairly in declining N's claim under the CRM Code and recommended HSBC compensate N by refunding the loss. She said it ought also add an interest payment calculated at 8% simple per year from the date the claim was declined to the date of settlement.

- HSBC didn't agree and so the complaint has been referred to me for 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.

I've discussed this complaint at some length with HSBC and I've explained my reasons for upholding it. So there's no need for me to go into great detail here, even though it hasn't agreed with what I've said so far.

I'm satisfied HSBC ought to have reimbursed N's losses at the point it considered the scam claim under the CRM Code. And so it's fair and reasonable that the bank pay compensation to that effect now, along with the interest payment recommended by our investigator.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case. It says the treasurer – on behalf of N – didn't have a reasonable basis for believing he was dealing with a legitimate invoice or payee. The bank says it's clear he had concerns and ought to have done more, in his role as treasurer.

Essentially this complaint comes down to whether the treasurer did enough once he realised there were some details about the payee that didn't add up. HSBC thinks he didn't, but I disagree.

The treasurer reached out to the person within N that ought to have been able to confidently answer his questions about who was to be paid. He knew the work being invoiced was being discussed with suppliers. And the invoice itself looked genuine. Most importantly, he could see that the invoice and instruction to pay had come from the nursery manager's genuine email address. And the same was true of the confirmation to proceed.

It's fair to say that most people will trust emails they receive from what appear to be entirely legitimate sources. That's particularly true if they aren't aware of, or alerted to, the dangers and features of invoice intercept scams. There's no suggestion here that HSBC provided any such warnings. And so the treasurer proceeded with an understandable and reasonable belief that he was following legitimate instructions from the nursery manager to pay a legitimate supplier.

This isn't to say there were no more checks that could have been carried out. But that is not the test here. It's whether the basis of belief in proceeding was reasonable. And I'm satisfied it was.

In terms of the recovery of funds, it's clear the bank didn't act as quickly as it ought to have done. It should have started attempts to recover the money immediately and there doesn't seem to be a valid reason for the delays.

It's unclear whether quicker action would have made a difference here. The money might well have been removed from the receiving account almost instantly, as is often the case with scams like this. But as N is now receiving a full refund it's not really necessary for further investigation to take place here. N is to be fairly compensated for HSBC's delay by way of the £325 in compensation and the 8% interest payment.

I find the rate of 8% to be fair for the interest award as N clearly had a defined purpose for the money and has had to adjust its finances to cope.

Putting things right

HSBC should now:

- refund the £7,200 lost to the scam;

- pay interest at 8% simple on that amount, from the date it declined the claim to the date of settlement.

My final decision

I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 24 March 2022.

Ben Murray
Ombudsman