

## **The complaint**

Mr and Mrs C complain that HSBC UK Bank Plc won't refund them for two cash withdrawals they made in an HSBC branch as the result of a scam.

## **What happened**

Mr and Mrs C are both in their 80's and have held a joint savings account with HSBC for a number of years. HSBC has provided statements showing they hadn't made any withdrawals from this savings account since at least June 2018.

In April 2021, Mrs C was called by someone claiming to be from HSBC. It appears the caller was either able to mimic the bank's phone number or used another technique to deceive Mrs C into believing she was speaking with someone on the bank's number. In reality, the caller wasn't from the bank and was a fraudster.

The fraudster (claiming to be from HSBC) told Mrs C that their joint account was apparently being used for suspicious transactions and there were concerns the branch had been issuing counterfeit notes.

Mrs C was told the matter was being investigated by the Police. The call was supposedly transferred so that the Police could speak to her about what was happening. Mrs C was then told that the Police needed her help with enquiries into suspected fraud at her local branch. The caller provided what seemed to be a Police badge number and other details. This further persuaded Mrs C she was genuinely assisting the Police.

In brief, she was told she had to go to her branch and withdraw £9,000 in cash. It was explained that this would uncover the use of counterfeit bank notes and provide the evidence needed to arrest the member of staff suspected of involvement. The fake notes would be collected by courier and she'd be reimbursed.

The caller told her that because at least one of the branch staff was suspected of involvement, if she was asked what the money was for, she should use the cover story that it was a 'gift for their grandchildren when they next came to visit'. Mr and Mrs C do not have grandchildren.

Mr and Mrs C visited the branch. They recall being asked what the money was for used the reason the scammer had told them to use.

HSBC's staff member says she recalls Mr and Mrs C saying they hadn't seen their six grandchildren for a year, due to concerns about Covid-19. They were due to be visiting shortly and Mr and Mrs C wanted to give them all cash gifts.

The staff member says she was unhappy with the withdrawal: about the safety of Mr and Mrs C leaving the branch carrying such a substantial sum in cash. She asked if Mr and Mrs C could make the transfer electronically instead. She says Mr and Mrs C reassured her it was fine, and they'd still like to withdraw the money as cash.

The staff member recalls saying that *“there are a lot of scams about so we have to be sure that this money is going to your grandchildren”*, to which Mr and Mrs C thanked her for her concern. She says the transaction later played on her mind.

Mr and Mrs C returned home with the cash sum of £9,000. The fraudster had told them to keep the phone line open while they were at the branch. They were then asked to read out the serial numbers of the notes, which the caller told them were indeed counterfeit.

They were told the Police investigation was progressing and they’d need to draw a further £9,000 the following day, again being assured they’d be fully reimbursed.

The next day Mr and Mrs C returned to the branch and withdrew a further £9,000 in cash. This time, they say they were kept waiting at the counter for around 10-15 minutes. Again, the evidence provided by both sides suggests this interaction was similar to that on the first occasion – they were asked the purpose of the withdrawal, and the same cover story was given.

Having returned home with the cash, the caller again made Mr and Mrs C read out the serial numbers and confirmed they were counterfeits. All of the cash (which they then believed was counterfeit) was collected by a courier.

That was the final contact Mr and Mrs C had with the caller and so it came to light that they had been the victims of a scam. Mr and Mrs C reported the matter to HSBC.

HSBC said it wasn’t liable to reimburse Mr and Mrs C for the money they’d lost to the scam. It said they’d authorised both withdrawals. It said that its staff had followed the correct procedures and had given Mr and Mrs C the opportunity to provide the correct information about the purpose of the withdrawals. If they’d provided the true information, then the scam could have been prevented.

Mr and Mrs C asked our service to review the matter. Our investigator thought HSBC hadn’t done enough when the withdrawals had been made. He said both were unusual and uncharacteristic given Mr and Mrs C’s transaction history on the account. He pointed out that the circumstances corresponded with a scenario the Banking Protocol was set up to tackle. He thought HSBC should have taken further steps here in line with the Banking Protocol and that this would have resulted in the prevention of the scam.

HSBC didn’t agree. It said:

- It was difficult to see what more it could have done around the first withdrawal, after having been given what seemed a perfectly legitimate reason at the time.
- The investigator was applying hindsight – HSBC could not have known this was the scam Mr and Mrs C were potentially at risk of. It could equally have been another scam such as paying cash for building work that wasn’t done.
- But it noted the quick succession of the second withdrawal and said that as a gesture of goodwill it would offer a refund of that second sum.

Mr and Mrs C didn’t accept HSBC’s goodwill offer. I’ve been asked to review everything afresh to reach a final decision on the matter.

### **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 have reached the same outcome as that of our investigator and for similar reasons.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process cash withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

Both sides accept that these transactions here were authorised withdrawals, even though Mr and Mrs C were the unwitting victims of a sophisticated scam. Given the terms and conditions of a typical bank account, they are presumed liable for the withdrawals in the first instance.

But that is not the end of the story. 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.
- In relation to branch transactions — follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr and Mrs C when they made two cash withdrawals of £9,000 on successive days, or whether it should have done more than it did.

Of particular relevance in this case is the Banking Protocol — a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office) and Trading Standards '*aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds*'. It has been fully in force nationwide since March 2018, and I consider it to have been good industry practice at the time of this scam.

In broad terms, the Banking Protocol requires branch staff to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses against what they expect as normal activity on the individual's account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately who will attend the branch to speak to the customer.

The Banking Protocol procedures are not limited to elderly or vulnerable customers, or certain fraud types, and bank staff are encouraged to contact the Police even if they are not sure.

I also consider it fair to say that the multi-step nature of the Banking Protocol recognises that there may be situations where the customer provides — as a result of social engineering — a 'false' cover story, and that the onus is on the bank staff/manager to make a judgement about whether the customer could be a victim of fraud (and not to rely on the customer's story or assurances).

But the starting point under the Banking Protocol is that a bank should be identifying any transactions that appear out of character or unusual for a customer. I've firstly considered, in relation to each transaction, whether HSBC did enough to identify and respond appropriately.

#### *First transaction - £9,000 cash - branch withdrawal*

HSBC's staff member has provided her recollections here. The staff member was not happy about the safety of Mr and Mrs C taking that sum of cash out of the branch. I consider her comments that this interaction with Mr and Mrs C later did "play on her mind" tend to suggest she thought this was a transaction somewhat out of the ordinary.

In any event, I have thought about whether this transaction was one that should have been considered out of character or unusual enough to have reasonably prompted the use of the Banking Protocol.

The transaction history HSBC has provided for Mr and Mrs C's savings account doesn't show that they made other cash withdrawals of this size on the account. Indeed, while there were three large credits made over the course of the statement history HSBC has chosen to provide (dating from June 2018) these don't show Mr and Mrs C making *any* prior withdrawals from this account.

So, the evidence HSBC has provided indicates both that Mr and Mrs C rarely transacted on this account, and that it was not typical usage for them to withdraw large cash sums from this account.

I do think it's relevant that Mr and Mrs C were both over 80 at the time. It's widely recognised that scammers disproportionately target consumers over the age of 70, unfortunately making those in that age group significantly more at risk of falling victim to a scam.

However, I think it's important to add that HSBC should've been on the lookout for any unusual or out of character transaction(s), regardless of the extent of the customer's age or even vulnerability.

All things considered, I find that the unusual and out of character nature of the transaction, as well as Mr and Mrs C's personal circumstances at the time should have been something the branch staff thought about carefully when deciding whether Mr and Mrs C might be at risk of financial harm when they asked to make this relatively large cash withdrawal.

The combination of all of these factors leads me to conclude that it ought reasonably to have been apparent at the time that this was unusual and out of character considering the history of their account.

#### *Second transaction - £9,000 cash - branch withdrawal*

The day after making the initial withdrawal, Mr and Mrs C returned to branch and requested a further cash withdrawal — again in the sum of £9,000.

At this point, they were making a second significant cash withdrawal in quite quick succession. As I've remarked above, it wasn't typical for Mr and Mrs C to make such large cash withdrawals. I'm satisfied that the second cash withdrawal was also significantly unusual and out of character relative to Mr and Mrs C's previous account usage.

#### *Did HSBC do enough in relation to these two transactions?*

I've gone on to consider what happened when Mr and Mrs C made each withdrawal, and whether HSBC did enough to protect them from financial harm on each occasion.

For the first transaction, both sides have provided their recollections from the time. On balance, I'm satisfied that these recollections are broadly consistent. I find it most likely (given the available evidence) that Mr and Mrs C were asked the two questions the staff member recalls. These were the purpose of the withdrawal, and whether Mr and Mrs C could send it electronically. I also find it most likely on balance that the answers given were as recalled by the staff member.

I've explained above why I think this withdrawal was unusual and out of character in the circumstances. While it wouldn't have been apparent simply from the request to withdraw an uncharacteristically large sum of cash exactly what *type* of scam Mr and Mrs C might be at risk of, I think the factors here were sufficient to have concerned HSBC that they were at risk of financial harm of some type, prompting further steps to be taken under the Banking Protocol.

The Banking Protocol provides for the possibility of a victim being given a cover story, and perhaps being told that branch staff may be complicit in a supposed fraud. This happened to be exactly the situation here. The scam Mr and Mrs C fell victim to is one the Banking Protocol anticipates and provides a robust and multi-layered means of preventing.

The staff member comments that the withdrawal was for a large enough cash sum to prompt her concern about Mr and Mrs C's safety. The response that Mr and Mrs C were planning to hold it for a future visit by their grandchildren, does not strike me as providing sufficient reassurance that there wasn't a risk of financial harm here.

There's also nothing to suggest that the cover story provided by the scammer had any depth whatsoever. I find this particularly relevant given that Mr and Mrs C do not have grandchildren, and so would have had to invent every detail on the spot if asked anything beyond the most cursory enquiry.

That is not to say I would expect HSBC to have undertaken an interrogation or engage in amateur detective work. But I do find it reasonable in the context of the Banking Protocol that, before allowing the withdrawal, HSBC should have asked sufficient questions to better understand whether a reasonable concern about possible financial harm was justified or not.

According to HSBC's submissions Mr and Mrs C were merely asked where the money was going, given general information about fraud and scams, and given the opportunity to send the money electronically.

I don't think the questioning went far enough here, considering the recommendations of the Banking Protocol and the close similarity of the transaction to a number of prevalent scam types disproportionately targeting older consumers.

Based on the evidence presented, I find it very unlikely the cover story would have stood up to much if any further enquiry, and it is possible the scam would have come to light then and there. In the alternate, I am satisfied that the further steps available under the Banking Protocol would have led to the scam being identified through the involvement of the Police.

As such I find that the first transaction ought to have been prevented. Had that happened it seems unlikely the second transaction would have taken place — the scam having already been uncovered.

However, in any event, I consider HSBC should also have prevented the second transaction. By this point, Mr and Mrs C were withdrawing a total of £18,000 in cash over consecutive days, again with the cover story that this was to be given as gifts to grandchildren. I find this ought to have raised concerns about the risk of financial harm — in very much the same way as I've explained above in respect of the first withdrawal. I am not persuaded by the evidence HSBC has provided that it did enough here either. Again, and for similar reasons I find that the Banking Protocol would have been appropriate, and for similar reasons would have resulted in this scam being uncovered and the loss prevented.

In determining this matter, I have also considered whether Mr and Mrs C should bear some responsibility by way of contributory negligence. However, until later, when the scam came to light, I am satisfied both were still wholly in the dark and simply did not appreciate what they were doing or the consequences of their actions. Indeed, they thought they were helping to stop financial crime, not facilitate it. I am satisfied there was no contributory negligence on the occasion of either withdrawal, they were simply the unwitting and blameless victims of a clever and manipulative fraudster. HSBC was the professional in financial matters and familiar with scams of this type; Mr and Mrs C were laypersons.

In the circumstances I am satisfied HSBC should fairly and reasonably reimburse Mr and Mrs C for the losses they suffered without any reduction, together with interest to compensate them for being deprived of the money they lost. I am satisfied that had the fraudster not taken the money from Mr and Mrs C it would have remained in their joint savings account, so interest should be at that rate.

I also think it is appropriate to make an award of £300 for the distress and inconvenience Mr and Mrs C have suffered. They have detailed the significant impact these events have had on them. In reaching that conclusion, I am mindful that their losses here were ultimately

caused by the callous act of a fraudster, but I find HSBC could and should ultimately have prevented the withdrawals — and in doing so prevented some of the corresponding distress and inconvenience suffered by Mr and Mrs C.

### **My final decision**

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about HSBC UK Bank Plc — and I therefore require the bank to:

- Pay Mr and Mrs C £18,000 within 28 days of receiving notification of their acceptance of my final decision; and,
- Pay interest on that sum at the savings account rate applicable to the account from which they withdrew the money calculated from the date of loss to the date of refund; and,
- Pay Mr and Mrs C £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 4 April 2022.

Stephen Dickie  
**Ombudsman**