

## The complaint

A company, which I will refer to as M, complains that HSBC UK Bank Plc didn't do enough to prevent them losing out financially as a result of an authorised push payment ('APP') fraud.

## What happened

The background to the complaint is well known to both parties and so I won't repeat it at length here.

Briefly, in early 2020, an employee of M who was authorised to make payments on behalf of M received an email, purportedly from the director of the company but actually from a fraudster, instructing them to make a payment of £86,400 to an account with HSBC. The employee made the payment as instructed. They then received further instructions asking them to pay £100,000 and £41,600 to the same account, which they did.

The fraud came to light a week later. The director immediately contacted M's bank who in turn contacted HSBC. Unfortunately, majority of the funds had been removed by then from the beneficiary's account and HSBC could only return about £4,000.

M complained that HSBC didn't do enough to prevent this fraud taking place and wanted the bank to reimburse the money they lost. The bank said that it made no errors and therefore wouldn't agree to reimburse M.

One of our investigators considered the complaint and concluded that it should be upheld. They said that HSBC could have done more to prevent the fraud. So, they asked that the bank reimburse the entire loss to M.

HSBC did not agree. In summary, it said that the activities on the beneficiary account following the payments were not unusual for it to have intervened. As such it made no error. It was also of the view that M contributed to its own loss and so they should bear some responsibility for the loss they have suffered.

As the bank did not agree with the investigator's opinion, the case was referred to me for a decision.

Having considered the submissions, I set out my provisional findings on the case to both parties on similar lines, except that I included more account specific information in my email to HSBC. I summarise below what I said:

- 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 terms and conditions of the customer's account. I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. HSBC also has an ongoing obligation to be alert to various risks in relation to accounts with it.

Ultimately, it is a matter for HSBC as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an APP fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case HSBC could have fairly and reasonably done more.

- The bank has provided relevant information to our service to allow us to investigate this. I am limited as to how much information I can share because it relates to a third-party account. But I'd like to assure that I've carefully reviewed everything before reaching my decision. Having reviewed the submissions, I think in this instance HSBC had reason to have done more.
- The beneficiary's account was a newly opened account. There was minimal activity in the first couple of months with small payments going in and out. It is in these circumstances, a total of £228,000 was received just within two days, from the same payer (M). This was then quickly followed by a series of large outgoing payments.

I think there was enough going on here that ought to have prompted HSBC to intervene and have a closer look, at least when the first payment of about £20,000 was made out of the account which was way above any payment previously made from the account, and on the back of three unusually large incoming payments.

- I cannot be certain now as to what would have happened had the bank intervened at that point. So, I will have to consider what more likely would have happened had the bank contacted its customer and if they were reachable, asked all the right questions. I think it is more likely that their customer wouldn't have been able to provide the bank with persuasive evidence that the payments were due to them. In particular, the customer wouldn't have been able to justify the receipt of such a large sum from M purportedly for services rendered by them when there was hardly any activity on the account which one could reasonably expect prior to such large income.

Based on this and other available submissions, I am not persuaded, on balance, that the bank's customer would have been able to produce credible explanation and evidence had the bank intervened. Generally, when there are concerns about a payment (or payments), banks do tend to thoroughly investigate the matter. And had HSBC done so, it would have meanwhile received the scam notification from M's bank.

All of this means I consider that had the bank intervened and investigated thoroughly what was going on, it was more likely that the fraud would have come to light. Thus, I think the bank missed an opportunity here to help prevent the financial loss to M. Therefore, it is fair that it compensates M for its failure.

- For completeness, I've also considered whether M should bear some responsibility for their loss due to any contributory negligence.

The instructions to the employee appear to have come from the director's genuine email address. So, there was nothing there to alert them of the fraud. However, the director told us that the employee ought to have called them to verify the request before making the payment but unfortunately on this occasion they failed to do so.

So, I think there was some failure on part of M. However, this does not negate the fact that HSBC too missed a subsequent opportunity to help M prevent their loss, as already described.

In the circumstances, I consider it fair that the loss is shared equally between M and HSBC.

- HSBC should reimburse 50% of the loss to M, which works out to £111,972 (£228,000 less £4,056.13 recovered). It should also pay interest on this sum at 8% p.a. simple.

HSBC told the investigator that there is no suggestion that if M was returned to the position they were in prior to making the payments, they would have obtained interest on those sums at such a level. It said that interest should not be applied at a level any greater than the prevailing rate of interest for M's own account from which the payments were received.

The funds were lost from a business current account, which earned little interest. But the relevant question is the opportunity cost of the lost funds to M. In this case, I cannot be certain about the cost to M of being deprived of the money because they might have used the funds in a variety of ways. It is however clear to see that this was a large sum of money and the loss has had a big impact on the company. In the circumstances, without any compelling reason to depart from our usual approach, I consider it fair and reasonable that HSBC pays M simple interest at 8% p.a. on the £111,972, and that the interest be paid from the date the bank was notified of the scam to the date of settlement.

M responded to accept my provisional findings. HSBC did not respond.

### **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 see no reason to depart from the conclusions I reached provisionally.

I remain of the view that HSBC could have done more to help prevent the fraud. I also remain of the view that there was some contributory negligence on part of M. Therefore, it is fair that they share the loss.

So, HSBC should reimburse 50% of the loss to M, which works out to £111,972. It should also pay interest on this sum at 8% p.a. simple.

### **My final decision**

My final decision is that I uphold the complaint.

In full and final settlement of it, HSBC UK Bank Plc should pay 50% of the loss to M, together with simple interest at 8% p.a. Interest should be paid from the date the bank was notified of the scam to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 12 April 2023.

Raj Varadarajan  
**Ombudsman**