

## The complaint

Mr M complains about the actions of HSBC UK Bank Plc when he was the victim of a scam in which he sent money to one of their customers.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some key events here. In March 2019 Mr M was unfortunately the victim of an email invoice interception scam. An invoice received by email had been intercepted and amended meaning when Mr M sent a payment, it went to a scammer's account rather than the intended beneficiary.

Mr M sent around £65,000 to the scammer's account on 18 March 2019. The account was held with HSBC. Mr M believes that HSBC failed to investigate what he says would have been an unusual transaction on that account and that this caused his loss.

Ultimately HSBC declined to reimburse the loss and a complaint was referred to our service. One of our investigators recommended that the complaint should be upheld, and that HSBC should refund around £55,000 plus interest along with a £250 award for distress and inconvenience. Mr M accepted this as resolution to the complaint, but HSBC disagreed and asked for an ombudsman to make a decision.

In January 2022 I issued a provisional decision in which I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*My considerations here amount to whether HSBC could and should have done more to prevent or respond to the alleged authorised push payment (APP) fraud that Mr M fell victim to. I've already issued a jurisdiction decision explaining what aspects of Mr M's complaint I have the power to consider. And I've gone on to consider those below.*

*I've looked at the activity on the HSBC account prior to Mr M's funds arriving. I don't think there was anything so unusual or out of character where I think HSBC ought to have intervened. But I've gone on to look at the activity on the account following the arrival of Mr M's funds.*

*Once the money arrived, some of it was promptly transferred from the account. The first payment that left the account was for over £9,000. It was followed by another request to transfer a similar amount. I don't think HSBC reasonably ought to have intervened in the first outgoing payment. But by the time the second payment was instructed it represented nearly £20,000 being transferred in a relatively short period of time. I think this was unusual activity in relation to that account and I think HSBC ought to have intervened. Had they done so, they then would've seen that this money was being paid away soon after receipt of a large incoming payment. They also would have discovered that this type of account activity didn't*

*match what they knew about their customer (based on the information gathered as part of their customer due diligence checks at account opening).*

*I think it is reasonable to have expected HSBC to have had some concerns at that point with the information they had to hand. And based on this, I think they should have spoken to their customer, prior to allowing further funds to leave the account. In these circumstances, HSBC ought to have satisfied themselves both that these were genuine instructions from their customer, and that their customer wasn't in the process of being scammed.*

*Had HSBC done so, I'm persuaded that the majority of Mr M's funds would have remained available for recovery. I say this because when HSBC later spoke to their customer, they claimed that they had no knowledge of any of the activity on their account. I think it's most likely that HSBC would have received a similar response if they'd contacted the customer at the relevant time.*

*I appreciate by the time HSBC spoke to their customer, all the funds had been withdrawn. So I've thought about whether this means a conversation would have gone differently if there were still significant funds remaining in the account and whether the accountholder would have tried to explain their entitlement to them. Such considerations can only be made on the balance of probability and I acknowledge we can't know for sure. But I think it's most likely that even if the accountholder was directly involved in the scam, they would similarly have tried to distance themselves from it upon contact from HSBC. The most persuasive evidence for what would have happened had there been a conversation with HSBC, is what actually did happen when a similar conversation took place.*

*In response to our investigators view, HSBC have made much of the fact that Mr M hasn't complained to his own bank, from where he sent the funds. They believe that his own bank has a duty of care to him as a customer (which they don't) and that in considering what is fair and reasonable in all the circumstances, this should be taken into account.*

*Our service has followed the FCA guidance from their handbook at DISP 3.5.2 in informing Mr M that it might be appropriate to complain to another respondent. But Mr M has explained that he doesn't think his own bank are at fault. He's even gone as far as sharing his statements with HSBC to evidence that the relevant payment wasn't unusual for his account. I can only comment on a complaint that has been brought to our service, as such I make no finding in relation to whether there is a case to answer between Mr M and his own bank. But as I'll come to below, I'll make provision for this in my intended directions.*

*Finally, as I'm intending to uphold this complaint, I've considered whether Mr M himself ought to bear some responsibility for his loss due to contributory negligence. I've seen a copy of the amended invoice and I don't think it is obviously altered or easily identifiable as not being genuine. So, I don't think Mr M was in anyway negligent or that it would be fair in the circumstances here to hold him liable for part of the loss.*

*I also agree with our investigator that the primary cause of the distress and inconvenience was the criminal acts of the scammer. But ultimately HSBC could have significantly reduced this. And I think £250 is a fair amount to reflect the impact their actions had on Mr M."*

Neither party responded to my provisional decision. Now the deadline for further submissions has passed, I can go ahead with my 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.

As neither party had any further comments or evidence for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint. HSBC UK Bank Plc must:

- Refund Mr M £65,038.14 less the first payment from their customer's account (£9,400) which I don't reasonably think could have been prevented.
- HSBC may also reduce this by any further amount (if any) that has already been recovered and returned to Mr M.
- HSBC should add 8% simple interest (less any tax lawfully deductible) to this amount from the date of loss to the date of refund.
- Pay Mr M £250 compensation for the distress and inconvenience caused.

I also think it would be fair and reasonable for Mr M to assign his right to complain to his own bank (and the right to any resultant redress) to HSBC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 March 2022.

Richard Annandale  
**Ombudsman**