

The complaint

Mrs Z is unhappy that HSBC UK Bank Plc, trading as First Direct ("FD"), won't refund her money that she lost after falling victim to a fraud.

What happened

Mrs Z held a bank account with FD. In early 2020 Mrs Z received a telephone call purporting to be from FD. She was told that her account had been accessed by fraudsters and that as a member of the bank was suspected to be involved, the matter was being investigated by the Financial Conduct Authority (FCA). The caller told Mrs Z that she should expect a call from the FCA to discuss next steps.

Mrs Z was contacted by another party claiming to be from the FCA and was instructed to mimic the actions of the fraudster and transfer funds from her account to help catch them. She was assured that she'd receive all of her money back after the investigation was concluded so, Mrs Z followed their instructions and made a number of payments from her account. The list of payments is extensive, but in summary:

- Multiple faster payments to UK based bank accounts totalling circa £160,000
- One bank transfer to an international account for £300,000

Unfortunately, it later transpired that Mrs Z was in fact speaking with fraudsters rather than her bank and the FCA and that her payments weren't being returned.

Mrs Z complained to FD regarding the transactions carried out. FD looked into Mrs Z's complaint and considered the applicable transactions under the Contingent Reimbursement Model (CRM). Having done so, it considered that it could have done more to protect Mrs Z and offered to reimburse 50% of her loss. It decided to not reimburse the remaining 50% as it felt Mrs Z could've taken more caution and carried out further checks prior to making the payments. It also refused to reimburse the transaction not covered by the CRM for the same reason.

Mrs Z remained unhappy with FD's response, so she came to our service. An Investigator considered the evidence provided by both parties and upheld the complaint. He felt that FD failed to evidence that Mrs Z hadn't met her requisite level of care and so he recommended it pay Mrs Z the remaining 50% for the payments covered by the CRM Code.

He also recommended that FD repay the remaining payment not covered by the CRM. He felt that the payment in question was out of character for Mrs Z's account and should have been questioned more thoroughly by FD considering previous account activity. He concluded that further intervention and probing likely would have uncovered the scam and resulted in Mrs Z not going ahead with the payment.

FD refunded the remaining 50% of payments covered by the CRM on a goodwill basis, but it didn't agree it should refund the remaining payment not covered by the code. Broadly speaking, FD felt that it challenged the payment sufficiently; it also pointed out that Mrs Z knowingly gave it false responses to security questions. It added that Mrs Z was negligent in

her own conduct considering that the circumstances were suspicious and implausible: but not questioned by her. Lastly, it said that Mrs Z had failed to carry out sufficient verification checks on the person calling to ensure their legitimacy.

As FD disagreed with the Investigator's findings, the matter has been passed to me to decide.

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 FD has now reimbursed Mrs Z the remaining 50% of payments covered by the CRM, all that's left for me to decide is whether the international payment of £300,000, which isn't covered under the remit of the CRM Code, should be refunded.

Should FD have done more to identify and prevent the fraud?

It's not contested that Mrs Z authorised the payment in dispute. She was duped into sending the money by a fraudster as she thought she was assisting with an investigation. Broadly speaking, the Payment Services Regulations 2017 sets out that Mrs Z will be liable for payments she'd authorised, and FD would be liable for ones she'd not. So, the starting point here is that Mrs Z should be held responsible for the amount lost. But there are further points to consider here.

As well as having an obligation to process payments in line with its customer's instruction, FD also have a responsibility to protect them from financial harm and ensure payments are for legitimate purposes. 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 FD 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.

FD did speak with Mrs Z prior to processing the international payment of £300,000, so it seems to me they did identify the payment was out of character and that Mrs Z might be at risk of financial harm. It asked a number of security questions and did provide warnings regarding common frauds. So, I've gone on to consider if these conversations were good enough in the circumstances.

Mrs Z was provided with a cover story by the fraudsters to give to FD when making the payment. I'm satisfied this why Mrs Z wasn't honest about the purpose of the payment. This is not an uncommon feature when it comes to scams and cover stories are something I'd expect HSBC to be on the lookout for. The reason a customer gives for a payment shouldn't necessarily be taken at face value, particularly when a firm has already identified the payment as being out of character and unusual.

Mrs Z claimed that she was making the payment for a property purchase in the country where the payment was being made to. She confidently provided this testimony and answered any further questions asked about it. She claimed that her friend had an identical property that she'd seen personally. She also claimed that the company she was transacting with was trusted by her and recommended by a friend who had used them before.

I also accept that during the telephone calls Mrs Z had with FD, she was given multiple warnings about common frauds. These include:

- A warning regarding criminals pretending to be from organisations, such as the bank.
- Warnings regarding email intercept scams and the importance of confirming banking information that has been received via email.
- Questions on whether Mrs Z was being forced or coerced into making the payment.

FD also asked Mrs Z to go away and confirm the banking information over the telephone with the business she was transacting with to ensure an email interception hadn't taken place. Mrs Z contacted FD the following day and told the advisor she'd done this, and the details were confirmed. But, of course, this wasn't the scam type that Mrs Z had fallen victim to.

If this payment had been made in isolation, then I think the amount of probing and questioning was probably sufficient. Mrs Z was providing false testimony due to the coaching from the fraudster and was confident in her answers. But this wasn't an isolated payment.

Mrs Z had made or attempted a number of payments—totalling £83,800—to the fraudsters prior to the instruction of the £300,000 payment. These were typically high in value—between £3,800-£19,000—, out of character for Mrs Z's normal account activity, to two new payees and carried out over a short space of time: within three days. I therefore find that the payment of £300,000, considered within this context, should have presented a significant concern to FD that Mrs Z was at risk of financial harm from fraud. And as a result, I don't think the conversation it had with her was good enough.

In addition to just the volume of payments, the payments also had some unusual features. One had been returned to Mrs Z's account as the beneficiary account had been closed: a possible indicator of fraud. Furthermore, prior to the payment being authorised, Mrs Z made FD aware that a loan had been taken out in her name, without her consent.

Considering that all the above activity had been carried out on Mrs Z's account within close proximity to the £300,000 payment, I find that this presented some concerning trends, not only for the payment, but for Mrs Z's account in general. For these reasons, I find FD should have gone further than questioning the £300,000 in isolation. It should fairly and reasonably have probed the combined activity on the account and the purpose for each, or at least several, of the payments leading up to the substantial payment she was attempting to make. While I acknowledge Mrs Z's convincing testimony regarding the individual payment, I'm not persuaded she'd have been able to do this, on the spot, when trying to explain the activity in its entirety.

Mrs Z's account was—in my view—displaying typical characteristics of a fraud, particularly indicative of a 'safe account' scam. And this, combined with Mrs Z's likely lack of ability to respond fully to questions regarding her account activity, would have raised concerns and suspicions rather than quelled them. FD did have the discretion to request supporting documentation to support Mrs Z's claim that the payment was being made for the purchase of a property, and I find there were enough red flags here to have warranted this. But I don't think it's likely Mrs Z would have been able to produce these documents or support her claim(s) about this payment, or the previous payments, as they simply weren't true.

I find that had this taken place, it's likely FD wouldn't have proceeded to process the payment and likely would have explored the fact that Mrs Z was being defrauded further. I'm persuaded that this in turn would more likely than not have prevented Mrs Z from losing the funds.

I do accept that FD attempted to warn Mrs Z about the scam she fell victim to—which suggests to me it did consider this to be a possibility. But I also don't think the intervention was good enough. They didn't go into any impactful detail of how 'safe account' scams are typically perpetrated and/or common features of them, such as how sophisticated impersonations can be and the claim that fraudsters tend to make regarding helping them with a 'fraud investigation'.

Should Mrs Z bear some responsibility for the loss?

There are times where it may be fair for a customer to share responsibility for the loss of funds. These may include instances where, but not exclusively, they've not taken reasonable steps to confirm the legitimacy of the person instructing them to make payments. Or, where they've ignored clear indicators of a fraud or risk.

Here, Mrs Z was initially contacted by a person claiming to be from her bank (FD) and was convinced they were genuine by the fact that they knew her account balance and a transaction that had recently been made on her account. They told her that there was some unauthorised activity on her account, and she'd have to take action to protect it. The caller claimed that a member of the bank was suspected of the activity and a regulatory body was investigating the matter and would be in touch at a later date.

I don't find it to be unreasonable that Mrs Z believed the person calling her. It would have been unlikely that a third-party would have access to such in-depth information relating to her account and it isn't uncommon for banks to call their customers. Furthermore, the fraudster wasn't asking Mrs Z to do anything, they were merely relaying information and telling her to await a further call. Mrs Z was also told that an employee of the bank was suspected of the activity, so I find it reasonable that her trust in contacting the bank to seek any further clarification was damaged.

Following this, Mrs Z received a call from a so-called representative of the regulatory body. Mrs Z did challenge the caller's authenticity and was told to verify the number they were calling from via the official body's website. Mrs Z did this and discovered the numbers matched.

These are sophisticated and convincing social engineering tactics. Mrs Z was given a number of reassurances by the fraudsters that they were genuine. And to compound this, Mrs Z was in, what she describes as, a vulnerable position at the time of the call. She'd recently lost her long-term partner, was anxious about entering a lockdown in self isolation due to her personal circumstances and was worried due to major surgery being delayed due to the pandemic.

Mrs Z was convinced that her actions were assisting an investigation and would help catch the perpetrator responsible by making the transfers. The fraudsters added a further layer of callous and sophisticated tactics by convincing Mrs Z that she shouldn't discuss the matter with anyone; cutting off any support that she may have been able to seek from friends and family.

I don't find that Mrs Z's actions were reckless or threw caution to wind. I'm persuaded she was likely under an immense amount of pressure to perform the instruction of the fraudster, believing them to be a trusted body. And any sounding board she may have normally used

to seek a second opinion was cut off from her.

For the above reasons, I don't find that Mrs Z should bear any responsibility for the loss.

Putting things right

HSBC ought to have reasonably done better in identifying and preventing the fraud that took place. As I've said above, had it done so, it's in my view that it could have prevented Mrs Z's loss. As such, it should reimburse her the remaining funds lost.

Mrs Z has told our service that the money transferred out of the account had originated from a number of sources. Partly ISA savings and partly stocks and shares investments. Had the fraud been prevented, Mrs Z is unsure what she may have done with the funds she'd drawn from her savings and investments. But it has been suggested that they likely would have been placed into a savings account with some being placed in yearly allowance ISA accounts.

As Mrs Z didn't have a savings account to obtain interest rates from, I've asked FD for their standard savings account interest rates. I think this is the fairest way to resolve a complicated and unknown interest rate to reflect putting Mrs Z back into the position she would have been in. FD has confirmed that their interest rate is 0.10% per annum.

My final decision

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

- Pay Mrs Z £300,000
- Pay interest on the amount of 0.10% 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 Mrs Z to accept or reject my decision before 5 August 2022.

Stephen Westlake
Ombudsman