

## The complaint

Mr Z, on behalf of Company G (a limited company, of which he is the sole director), is unhappy HSBC UK Bank Plc ("HSBC") did not reimburse Company G after he transferred money to a fraudster as part of a scam.

For simplicity, although this is a complaint by Company G about its business account, I will refer to the director, Mr Z, rather than the limited company through much of this decision – as it was Mr Z who interacted with the fraudster.

## What happened

I issued a provisional decision in February 2022 to explain why I thought Company G's complaint should be partially upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from that provisional decision:

*"Mr Z was the victim of a scam and that's accepted by everyone. As it's not in dispute that what happened to Mr Z was an act of fraud, I've used the term 'fraudster' to refer to the third party involved.*

*In December 2019, Mr Z received a call from someone who said they were calling from HSBC - his bank. The caller called on a recognised HSBC number, however, it wasn't the number HSBC usually called Mr Z from. Mr Z pointed this out and the caller apologised and promptly called back on the premier banking number – which Mr Z checked on the back of his card. Mr Z says this led him to believe he was speaking to HSBC. Mr Z can't specifically recall what personal information the caller knew about the account but he does remember that the caller knew various account balances.*

*The caller said they were from HSBC's internal fraud team – a small and secret department within the bank that specialised in internal fraud. Mr Z has told us he did have some initial suspicions about who he was speaking with and asked for the employee numbers of the two members of HSBC staff who he was told he was speaking with that day. Mr Z was provided with two employee numbers.*

*The caller told Mr Z that numerous suspicious transactions had been identified on his business account - which had now been frozen pending investigation. The caller explained that Mr Z needed to actively transfer money from his business account to safe accounts at another bank which would ultimately result in the attempted fraudulent transactions being 'cancelled'.*

*The caller also told Mr Z that it was a member of HSBC staff at his local branch that was believed to be committing theft and there was an investigation underway. Mr Z was told the police were involved and under the terms and conditions of his account he had an obligation to assist with the investigation. Mr Z was told things had to move quickly as the police were already monitoring the member of staff's activities via CCTV in branch. Mr Z was then instructed to make a payment of £9,900 to a safe account. Mr Z duly logged into the account and made the payment as requested.*

*After the first payment of £9,900 and after ending the call with the fraudster, Mr Z became concerned about fraud. He's told us that at this point, he spoke to his wife about the call he'd just received. Mr Z has told us this was a very brief conversation and that he didn't tell his wife that he'd already transferred some money as he was a little embarrassed about it. Mr Z has told us that his wife said that the call "sounded dodgy" and that "he should call the police".*

*Having spoken to his wife, Mr Z decided to call Action Fraud but changed his mind and called HSBC instead. After being placed on hold for a while, Mr Z eventually got through to an advisor. There is no record of this conversation and so I can't be sure of what was discussed but Mr Z has told us that he queried the two the employee numbers he'd been given by the fraudster. Mr Z was told that the numbers provided to him were too short to be HSBC employee numbers and that he would be transferred through to the business banking department. But, whilst on hold, Mr Z received another call from the fraudster. When Mr Z answered, he was told:*

*"We have just had a flag on your account and can see you have called in to customer service, you completed security checks, and you asked about staff ID numbers. Please do not be concerned, but this is sensitive, as you can see, we have total visibility".*

*Mr Z says this reassured him that he was speaking with genuine HSBC as he didn't see how it was possible that anyone other than HSBC could've known that he had called HSBC or what he'd discussed. Mr Z told the fraudster what the HSBC call-handler had said about the employee numbers being too short but the fraudster reassured him that the internal fraud team was secret due to the nature of its work, and the personal banking team, who he had got through to, wouldn't know about their employee numbers or have access to any information about them. Reassured, Mr Z continued to speak with the fraudsters.*

*Mr Z says had been speaking with the fraudster for a number of hours when he was told to go into branch and transfer £29,700 to what they described as a 'dummy account'. He was told the person under suspicion would be on the till in branch and would deal with the transaction - her actions being monitored whilst the transfer took place so the police could see if she was stealing. Mr Z was told that he must assist with the investigation or his money was at risk. Mr Z drove to his local branch to make the transfer where branch staff agreed to raise his daily transfer limit to £30,000. During his time in branch, he left his mobile telephone on, so the fraudster could monitor the conversations he was having.*

*Mr Z then left the branch with the intention of completing the payment online at home but was instructed by the fraudsters to go back in and complete a CHAPS transfer as they needed the staff member under suspicion to deal with the transaction. He went back into the branch and made the transfer – he says without any comment or questions from HSBC staff. Later in the afternoon, the fraudsters told Mr Z that he made the first branch payment with the wrong cashier and needed to go back in. And so later the same day, Mr Z went back into the branch and made a further payment of £20,000 with a different cashier.*

*When he got home, Mr Z was instructed to make another payment online for £10,000 and then his money would be returned to him. This brought the total amount transferred out of Z's account to £69,600. After the final transfer, Mr Z received no further contact from the fraudsters and it was at this point that he realised he had been scammed and contacted HSBC.*

*Following an investigation, HSBC agreed to refund 50% of the money Mr Z lost as it didn't think it had done enough to prevent him/Company G from falling victim to the scam. It went on to say that Mr Z should bear the remaining responsibility for his loss – as he had failed to carry out reasonable checks before transferring the money out of Company G's account. They also offered Mr Z £50 in compensation due to a small administrative error that took place whilst the investigation was on-going.*

*Unhappy with HSBC's response, Mr Z brought the complaint to our service. He said he felt himself to be vulnerable at the time as he was working alone and hadn't had anyone who he could speak with in order to 'break the spell' woven by the fraudsters.*

*One of our investigators looked into things and felt the complaint should be upheld in full and that HSBC should offer Company G a full refund of the amount lost. Our Investigator didn't think HSBC had been able to adequately prove that Mr Z had acted without the requisite level of care.*

*HSBC disagreed and it provided extensive submissions to this service as to why. In summary, HSBC said:*

- Mr Z's account of what happened was uncorroborated and shouldn't be taken at face-value.*
- The investigator had failed to recognise that the customer in this case was Company G and not Mr Z – HSBC pointed out that higher standards are expected of commercial customers in respect of protecting themselves from fraud and the investigator had not commented on whether the company's internal fraud procedures were inadequate or not. HSBC said there was no evidence that the correct company procedures had been followed.*
- Mr Z's individual characteristics had not been taken into account – Mr Z was a sophisticated individual with extensive business experience.*
- HSBC said it did not make sense that Mr Z had been called from the personal banking line as this was a business account. When Mr Z pointed out that the number calling was unusual, the ability of the fraudster to change the number at will should've been a red-flag.*
- Mr Z did nothing to independently verify what he was told during the scam calls – apart from the brief call to HSBC where he questioned the staff employee numbers he had been provided with. HSBC felt that rather than reassuring Mr Z, this conversation should have heightened his concerns and prompted further verification on his behalf - but he continued to make payments.*
- HSBC said there was no understandable rationale for the payments and the story provided by the caller was unbelievable. HSBC felt it was unclear why Mr Z would be asked by the bank to move his money to an account that wasn't in his name or why the bank would've needed the involvement of Mr Z, and his money, in a secret police investigation.*
- HSBC pointed out that Mr Z had made various comments throughout the course of its investigation that indicated he was suspicious of the story and the actions of the fraudster from the beginning.*

*Overall, HSBC felt it was clear that Mr Z was suspicious from the outset, and alarm bells ought to have rung when he was told that the employee numbers he had been given*

weren't HSBC employee numbers. Yet he failed to verify what he was told and instead made a number of payments to three non-HSBC accounts - despite the story being told to him being unbelievable.

Our investigator considered what HSBC said but he didn't change his mind.

As an agreement could not be reached, the case was passed to me for a decision.

What I've provisionally 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 am currently minded to reach a different outcome to that of our investigator – in that I think the complaint should only be partially upheld. However, it has also come to light during the course of my investigation that the second payment of £29,700 has been recovered by the receiving bank and should now be returned to Company G. I'll set out my current thinking in more detail below:

In broad terms, the starting position is that a payment service provider is expected to process payments that its customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs), which apply to this complaint, and the customer's account terms and conditions. But where a customer made a payment as a result of the actions of a fraudster, it may sometimes be fair and reasonable for a payment service provider to reimburse its customer, even though the payment(s) were authorised.

Under the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which HSBC is a signatory of, it should reimburse customers who are victims of authorised push payment scams, except in limited circumstances.

In considering this, I have taken account of whether HSBC ought to have reimbursed Mr Z/Company G under the provisions of the CRM code, and whether it ought to have done more to protect Mr Z/Company G from potential financial harm from fraud. The Code also places a level of care on Mr Z/Company G, and so I have also considered whether Mr Z met the required level of care also.

#### The CRM Code

The CRM code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this one, in all but limited circumstances. If HSBC declines to reimburse its customer in full, it is for HSBC to establish that its customer failed to meet the requisite level of care under one, or more, of the listed exceptions set out in the CRM.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made.
- The customer made the payment without a reasonable basis for believing that:
  - the payee was the person the customer was expecting to pay;
  - the payment was for genuine goods or services; and/or
  - the person/business with whom they transacted with was legitimate

There are further exceptions within the CRM, but these aren't applicable here.

*HSBC has already told us that it failed to provide Mr Z with an 'effective warning' prior to the payments being made and for this reason it has already offered to reimburse Company G 50% of its total losses. Therefore, the only thing left for me to consider is if Mr G met the requisite level of care required of him under the code.*

*Did Mr Z have a reasonable basis for belief? Payment 1 - £9,900*

*Under the CRM code, HSBC can choose not to reimburse Mr Z in full if it doesn't believe he took the requisite level of care to ensure he had a reasonable basis for believing that the business he was paying was legitimate. It isn't enough for Mr Z to have believed that he was paying a legitimate person/business, he had to have a reasonable basis for that belief.*

*I have carefully considered HSBC's representations that Mr Z did not have a reasonable basis for believing he was making a payment to a genuine source, but, in terms of the first payment at least, I don't agree. In particular, I'm not persuaded Mr Z failed to take the requisite level of care required for HSBC to choose not to reimburse him in full under the terms of the CRM Code. In reaching this conclusion, I've had regard to the scene that was set by the fraudster and the impact I believe this reasonably had on Mr Z when acting 'in the moment'. I'll explain why:*

- It appears the fraudster used social engineering techniques in order to gain Mr Z's trust, they appeared to be calling from a recognised HSBC number or at least one that was very similar by way of 'spoofing'. This means that the fraudster was able to mimic a genuine number used by HSBC. This can be particularly persuasive to customers who often aren't aware this is possible. I don't agree with HSBC that the fraudster appearing to call from one HSBC number and then another should've been a red-flag here, as I wouldn't expect a layperson, such as Mr Z, to know whether this would be possible or not.*
- The caller was able to provide Mr Z with information that he thought only his bank would know – such as the balances of his account(s).*
- Mr Z was on the call with the fraudsters for over an hour, they had created an environment where Mr Z had felt his money to be at risk and that he needed to act quickly in order to protect it. Mr Z did challenge the caller – requesting employee numbers to test their legitimacy. And I don't think HSBC has given enough consideration to the fact the fraudster had created an environment where Mr Z thought he had to act quickly to protect his money. He's told us that the caller was professional and convincing. The convincing nature of these scams can often have a negative effect on a person's thought process and make them take steps that, in the cold light of day, they might not otherwise take.*

*In summary, I find that Mr Z did have a reasonable basis for believing the first transaction he made was being made in connection with a legitimate service. I haven't seen anything here to persuade me that just because Mr Z was acting in the capacity of a director of a business, that it would make him any less susceptible to this type of scam. I'm not satisfied HSBC has been able to establish that Mr Z acted without a reasonable basis for belief when he sent the first payment and so I'm currently minded to recommend that it should be refunded in full.*

*Did Mr Z have a reasonable basis for belief? Payments 2, 3 and 4*

*In terms of payments 2, 3 and 4. I have reached a different conclusion to the one above and to the one reached by our Investigator. By payment 2, I don't think Mr Z had a reasonable basis for believing he was making payments at the request of HSBC and I*

*agree with HSBC that he failed to take the requisite level of care required for HSBC to now reimburse Company G in full under the terms of the CRM Code. I'll explain why.*

*Mr Z has told us that after making the first payment, his call with the fraudsters ended. He's told us he was concerned about fraud, he felt the call to have been 'strange' and that he needed a break - and potentially to speak with someone else. It was at this point Mr Z spoke to his wife. He has told us she informed him that call sounded 'dodgy' and advised him to call the police. And so, after the initial call, I'm persuaded that Mr Z did have some time to further consider what he had been told by the fraudsters. He was suspicious enough to run what had happened past his wife who also concluded that the call was suspicious.*

*Acting on these suspicions, Mr Z contacted genuine HSBC who confirmed that the staff numbers he had taken from the fraudster were too short to be HSBC's. I agree with HSBC that this should have heightened Mr Z's concerns as to who he had previously been speaking to.*

*Whilst I acknowledge what Mr Z has told us about the fraudsters calling back at this point, apparently aware that he had contacted HSBC to make further enquires and it was this that reassured him he was speaking with HSBC, I'm not satisfied this was reasonable. At this point, it appears that Mr Z had significant concerns and these concerns had been mirrored by his wife who had told him to call the police. He'd then independently spoken with a genuine HSBC member of staff who had told him the employee numbers he'd been provided with could not be HSBC employee numbers. And so by this point, I think there were should've been significant genuine concerns that should've prompted further verification by Mr Z and I don't think him questioning the fraudster about the employee numbers when they called back was good enough – he had simply asked the fraudsters whether what they had told him was correct and sought no further independent verification.*

*I also think the reason for the payments given from this point should have been cause for concern – especially in light of the findings I have made above. I agree with HSBC that its unclear why HSBC and the police would need one of its customers to use their own money in order to catch someone they suspected of fraud. It's also unclear why a customer would need to carry out numerous high-value transfers in order to catch this member of staff. And I think this should've prompted some concern from Mr Z. There were a number of red-flags here.*

*But Mr Z hasn't provided any evidence to show he carried out any sort of due diligence before deciding to make the transfers at the fraudsters request – over and above the one call to genuine HSBC which should've undermined what the fraudsters had told him. So, whilst I acknowledge that Mr Z was ultimately persuaded by what the fraudsters had told him, I'm satisfied that he ought reasonably have carried out more checks before making the payments. So, having taken everything into account, I'm satisfied Mr Z should've done more to ensure that what he was being told was genuine before he agreed to transfer money out of his account in order to meet the required level of care under the CRM Code. Had he done so, I don't think he would've proceeded to make the payments. And so I can't fairly say that met Mr Z met his requirements under the Code, and I think this made a difference here.*

*In light of my findings above, I would normally recommend that the offer already put forward by HSBC, 50% of Mr Z's losses in relation to payments 2,3 and 4 to be fair. However, during the course of my investigation it has become clear that the bank where the second transfer was paid to was able to recover Company G's funds. It's not clear at*

*this point whether HSBC contacted this bank in order to inform them of the scam once it had been notified of it by Mr Z and it's unclear if these funds have been returned to HSBC or not. As part of its response to this provisional decision, I would ask that HSBC confirm:*

- if it contacted the receiving bank upon notification of the scam*
- if the recovered funds have been returned to HSBC by the receiving bank, and;*
- if it will now speak with the receiving bank to arrange the return of the funds if they have not been returned already*

*For the above reasons, I am currently minded to reach the conclusion that payments 1 and 2 be refunded in full and HSBC's offer of a refund amounting to 50% of payments 3 and 4 to be fair.*

*For the reasons given, I'm currently minded to recommend the following:*

- Payment 1 (£9,900) to be refunded to Company G in full plus 8% simple interest calculated from the date the payment left Company G's account to the date of refund.*
- Payment 2 (£27,900) to be refunded to Company G in full plus 8% simple interest calculated from the date the payment left Company G's account to the date of refund.*
- I am satisfied that HSBC has already made a fair offer in relation to payments 3 and 4 and this has already been returned to company G."*

### **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'm minded to reach the same overall conclusions I reached in my provisional decision. I'll explain why.

Both HSBC and Mr Z, on behalf of Company G, responded to my provisional decision with further points. For ease, I have summarised their submissions below.

- HSBC agreed with my findings in relation to payments 1, 3 and 4.
- In regard to payment 2, it said it had contacted the third-party bank when Mr Z first reported the scam and the third-party bank had confirmed only £5.00 remained in the receiving account. This was later credited back to Company G's account.
- HSBC had received no further evidence that the third-party bank had been able to recover this payment and without this evidence it felt its offer of 50% of this payment was reasonable.
- Mr Z highlighted that it was his suggestion to call the police following the first payment - and his wife agreed.
- He said that an opportunity to identify the fraud had been missed by the HSBC call-handler he had spoken with after making the first payment.
- He stressed that throughout the scam, he thought his funds were always under his control. He pointed out that he genuinely thought the accounts he was transferring to were in his name and that only his bank would be able to open these accounts. At no point did Mr Z realise that a payment could be made where the payee name didn't match the name of the account holder.

- Mr Z pointed out that this flaw was made known to the banking industry in 2019 with recommendations that 'Confirmation of Payee' procedures be put into place. But HSBC had failed to warn its customers that, at the time, account names were irrelevant in the transfer of funds. Mr Z said that HSBC's failure to provide this warning had ultimately led to the success of this fraud.
- Mr Z pointed out that he was unsure as to who HSBC felt he could contact to independently verify what he was being told by the fraudsters.
- He said that the fact the fraudsters asked him to go into a HSBC branch further persuaded him that it was HSBC he was dealing with. He didn't think fraudsters would want him to speak with genuine members of staff in case the fraud was uncovered. Mr Z said he considered the branch to be a safe environment.

I've reviewed all of the additional points put forward by both Mr Z/Company G and HSBC. And I'll address each point in turn.

#### *HSBC's additional points*

Since issuing my provisional decision, our investigator has been in touch with both HSBC and the third-party receiving bank who were in receipt of payment 2. They have been able to provide HSBC with the evidence it required to show the funds had been saved. I am pleased to say that HSBC has now contacted the third-party bank to arrange the return of the remainder of the funds to Company G and so my understanding is that this will be returned shortly, if it hasn't been already.

HSBC has also been able to provide evidence to show that it contacted the third-party bank within a reasonable time-frame when Mr Z reported the scam. It has also been able to show that it was initially informed only a small amount of Company G's funds remained in the account – which were later returned to Company G. HSBC were not updated later on down the line when the third-party bank had been able to save the rest.

#### *Mr Z/Company G's additional points*

I acknowledge what Mr Z has said it being him who initially suggested that the police should be called following the first transaction, and his wife agreed. However, I think this only supports the conclusions that he had significant concerns following this payment and should've sought to speak to the third-party; such as HSBC, Action Fraud or the police as he had suggested.

Based on the evidence I've seen, I cannot agree that the call-handler Mr Z spoke to following the first payment missed an opportunity to identify Company G was at risk of financial harm from fraud. The call was terminated and the conversation wasn't concluded. We don't have a recording of this call and so I can't say with any certainty as to what was discussed. However, Mr Z has confirmed that he brought up the two employee numbers that he had been provided with and he was told they were not HSBC employee numbers, as they were too short. However, based on what I've seen, it doesn't appear that the conversation extended beyond this - to the point that it was decided during the call that Mr Z was falling victim to a scam. Had this been discussed, even briefly, it's reasonable to presume that Mr Z wouldn't have continued to make the later payments. And so I'm not satisfied that this conversation was so in-depth that HSBC's call-handler missed an opportunity to prevent the scam, before the call was ultimately terminated by Mr Z.

I've carefully considered what Mr Z has said about thinking that he was transferring funds to accounts held in his own name. I've also taken on board what he's said about him thinking it unlikely that fraudsters would ask him to go into branch to make transfers. I don't doubt this



is what he thought at the time. However, I am still of the opinion that his own suspicions; which he has now confirmed prompted him to think about calling the police and did prompt him to call HSBC, paired with the suspicions of his wife, the conversation he had with genuine HSBC, should've caused serious doubt in his mind as to what he was being told by payment 2. And I think this should've prompted additional verification on his behalf. I'm not persuaded that Mr Z wouldn't have been aware as to how he could verify what he was being told – he has already told us that he has thought about calling the police/Action Fraud to discuss the initial payment. These options were available to him.

I also acknowledge what Mr Z has said about not realising payee names didn't represent account ownership at the time and had HSBC warned him of this, he wouldn't have proceeded. I also acknowledge HSBC would've been aware that a 'Confirmation of Payee' system was due to come into place but wasn't at the time. But there was no obligation for HSBC to inform its customers that it wasn't in place already or what this meant. And I don't think it would be fair for me to hold HSBC to a standard that wasn't in place at the time. It is the Financial Conduct Authority ("FCA"), the regulator of financial services in the UK, who are responsible for regulating the conduct of businesses and setting rules for businesses to follow, not the Financial Ombudsman Service.

Finally, I want to stress that I'm really very sorry to hear about what's happened to Mr Z/Company G. I have significant sympathy for the situation he has found himself in. But having thought very carefully about what he's told us happened at the time and HSBC's actions, I'm not persuaded it would be fair and reasonable for me to hold HSBC solely liable for his losses.

### *Summary*

Having taken into account the further submissions provided to me by both Mr Z and HSBC, I am not minded to depart from the conclusions I reached in my provisional decision for the above reasons.

### **My final decision**

My final decision is that I partially uphold this complaint against HSBC Bank UK Plc.

HSBC should now:

- Refund payment 1 (£9,900) in full plus 8%\* simple interest calculated from the date the payment left Company G's account to the date of refund.
- Continue to liaise with the third-party bank to ensure Payment 2 (£27,900) is returned to Company G's account in full taking into account any monies already recovered/paid.
- Pay 8%\* simple interest on the above amount from the date the payment left the account to the date the total amount is returned.
- I am satisfied that HSBC has already made a fair offer in relation to payments 3 and 4 and this has already been returned to company G.

\* if HSBC Bank UK Plc deducts tax from the interest element of this award, it should provide Company G with the appropriate tax deduction certificate)

Under the rules of the Financial Ombudsman Service, I'm required to ask Company G to accept or reject my decision before 25 April 2022.

Emly Hanley  
**Ombudsman**