

## **The complaint**

Mrs H complains HSBC UK Bank Plc (“HSBC”), won’t refund the money she lost when she was the victim of a scam.

## **What happened**

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here.

In summary, Mrs H fell victim to a scam when purchasing what she thought was a legitimate car.

Mrs H identified the car through a well-known online website. Mrs H says that she had extensive communications with the seller and carried out checks on the car also. The car was to be delivered to Mrs H by a transport / delivery company – whom I’ll refer to as “Company A”.

Mrs H signed an agreement with Company A on 4 May 2017. The agreement was also signed by the supposed seller of the car and by Company A. Upon payment to Company A, the car would be delivered to Mrs H and she would then have three days to inspect / drive the car. If Mrs H was unhappy with the car or it was not as advertised, the agreement stated that she would be refunded by Company A.

On 5 May 2017, Mrs H made a payment for the purchase of the car, she paid £6,950 through her online banking. She believed this was to an ‘escrow’ account which held the funds.

Unfortunately this was a very sophisticated scam. There was no car for sale and Company A, whom Mrs H thought she was dealing with, was in fact a clone of a genuine transport company. So Mrs H had sadly paid money to fraudsters.

Mrs H uncovered the scam several days later when the car wasn’t delivered. At the time, Mrs H says she contacted HSBC to try and recover the money, but ultimately no money was recovered from the receiving bank account (the account used by the fraudsters).

Mrs H formally complained to HSBC about the matter in February 2021. She said that she had taken every precaution before proceeding to make the payment for the car, taking the time to discuss it and had also carried out a number of different authentication checks.

Mrs H said the payment was unusual given her account activity and considered, in line with HSBC’s own ‘Safeguard Service’ policy and alongside other relevant law and regulations, it should have done more to contact her about the payment and advised her that her actions were indicative of fraud. Mrs H says this would have changed everything and would have prevented her falling victim to fraud.

HSBC investigated the matter and provided its response on 10 March 2021. It declined refunding Mrs H the money she had lost. It explained that it has a fraud detection system in place – but that it also has to tread a fine line between detecting fraudulent activity and preventing customers from accessing their money. It also explained that it could not offer a more detailed explanation as it considered it could compromise the security of its fraud detection systems.

Within HSBC's letter it advised Mrs H that she could refer the matter to our service if she remained unhappy. Mrs H subsequently brought her complaint to us.

Our investigator looked into things but didn't recommend the complaint be upheld. They agreed the amount Mrs H was paying was unusual and out of character for her and HSBC should have contacted her about the payment. But they also considered had HSBC intervened at the time, then it was likely – based on the checks Mrs H had already carried out, to satisfy herself that everything was genuine – HSBC would have been satisfied that Mrs H wasn't at risk of financial harm.

They also felt HSBC couldn't have reasonably done anymore to try and recover the funds from the beneficiary bank.

Mrs H disagreed and provided her responses on the matter. In short, Mrs H remained of the opinion that HSBC had failed in its duty of care as it hadn't contacted her. Mrs H remained strongly of the opinion that a call from HSBC would have alerted her to the potential risk of financial loss and she wouldn't have gone ahead with the payment.

As Mrs H disagreed, and as the matter hasn't been resolved, it's 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.

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.

I'm very aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this and I've thoroughly reviewed all of Mrs H's correspondence and HSBC's. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether HSBC should have done more to prevent Mrs H's losses. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having thought very carefully about HSBC's actions, I'm not upholding Mrs H's complaint. I do appreciate how disappointing this will be for her. Mrs H was a victim of a sophisticated cruel scam and has lost a significant amount of money. But in weighing everything up, including the testimony Mrs H has provided about what happened and what she considers she would have done had HSBC called her about the payment, I don't think I can fairly say HSBC should reimburse her. I'll explain why.

### *The relevant regulations in place at the time*

In broad terms, the starting position at 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.

It is the case that Mrs H authorised the payment / transfer that is in dispute – and that's accepted by all parties. And under the Payment Service Regulations 2009 (which are the relevant regulations in place here) that means Mrs H is responsible for them.

That remains the case even though Mrs H was the unfortunate victim of a scam.

But that isn't the end of the story, and taking into account the law, regulators rules and guidance, relevant codes of practice (some of which Mrs H has made reference to in her submissions) 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.

### *What does this mean for Mrs H?*

Given the above, I've looked to see first, whether Mrs H's transaction was unusual and out of character. And second, whether HSBC should have stepped in and intervened – so taking some additional steps or checks with Mrs H about the payment. But, and importantly, I have to determine whether these additional checks or steps would have put HSBC on notice that something might not be right, and that Mrs H may be at risk of financial harm or revealed the scam.

Mrs H set up and transferred £6,950 to a new payee. HSBC confirmed that the transfer didn't flag on its fraud detection system. Having looked at Mrs H's account history, she hadn't made a payment / transfer of that size. So, considering this and that the payment was to a new payee, I do think that the transaction was unusual and out of character for her and I would reasonably have expected HSBC to have taken additional steps or made additional checks before executing the transfer.

However, and as mentioned above, with any intervention, I need to determine whether that intervention should have given HSBC cause for concern that Mrs H may have been at risk of financial harm.

It's not for our service to dictate the checks HSBC should do or the questions it should ask. HSBC should take steps designed to protect its customers from the risk of financial harm. And, in these circumstances, I think it would be reasonable to expect these checks to include questions about the purpose of the payment, which would have identified that Mrs H was purchasing a car. And then from there, HSBC would need to satisfy itself that everything was ok with the transaction. It could broadly do this by asking whether Mrs H had seen the car she was buying in person, whether she had done any checks into the car's history and whether she had done any checks into the company she was sending the money to and who were delivering the car to her.

And when considering the questions HSBC could have likely asked, it is also important for me to acknowledge that at the time, Mrs H had absolutely no idea that she was falling victim to a scam which was extremely sophisticated in its nature. And Mrs H, prior to making the transfer, had carried out a significant amount of checks on the seller, the car and Company A who were responsible for delivering the car (and who were in fact a clone of a genuine firm). Below is some of Mrs H's testimony in relation to the actions she took before proceeding with the payment:

*"...In addition to extensive communications with the seller of the car, I carried out various independent background checks to make as sure as I could be that the sale was legitimate, and that any payment would be safe and secure. Over a period of several days, I conducted various kinds of due diligence to validate the dealer's credentials and the car they were selling. I studied a lengthy and detailed feedback history of the seller (including dozens of reviews) and I checked with Google Maps to ensure that the given address of the seller was authentic. All of this due diligence helped me to build up sufficient confidence in both the seller and the car."*

*"...Checks on the vehicle included a vehicle history check for accidents, theft and outstanding finance, a separate MOT check, a check for the road fund licence, a Google check using the vehicle registration number, a reverse image check and a check of other [models] with similar mileage and specification. Checks on the dealer included the Companies House website, Google Street-view for the address, and the 100% positive feedback about the seller..."*

So having carefully considered the above, alongside that at the time Mrs H had no idea that she was falling victim to a scam – then to my mind, and on the balance of probabilities, I'm satisfied that even if HSBC had carried out further checks and asked questions like those I've mentioned, I think it would have been satisfied by Mrs H's answers. I don't think there's anything further HSBC could reasonably have asked, or suggested Mrs H do, that would have uncovered the scam. While Mrs H had not seen the car in person, given it was far away, I'm mindful she had carried out checks on the company delivering the car. Mrs H didn't have any concerns here (as unfortunately it had been cloned), and Mrs H was also happy that the vehicle was going to be delivered. Mrs H had also signed an agreement which had given Mrs H peace of mind at the time that she could return the car if she wasn't happy with it.

I understand Mrs H's point, when she says that there is no way of knowing what would have happened during a call – because no call was made to her by HSBC. And that she says a call from HSBC about the payment would have been enough in itself. However, I have to consider, on the balance of probabilities, what I think is more likely to have happened than not, had HSBC called like I think it ought to have done. And in this case, I think it is more likely than not that as Mrs H was fully convinced that everything was legitimate and had carried out extensive checks on the seller, the car and Company A, then she would have – at the time – provided answers to any questions HSBC may have asked, which I think would fairly and reasonably have satisfied it and not given it cause to be concerned that she may have been at risk of financial harm.

I know Mrs H feels very strongly that if she received any call from HSBC it would have changed things for her. But for the reasons given above, I can't be as satisfied as I would need to be to say this would have been the case.

Overall and in summary, it is my judgement that had HSBC called Mrs H about the payment, then I consider it is more likely than not that Mrs H would have answered any questions and in doing so would have satisfied HSBC that she wasn't at risk of financial harm. I don't consider the scam would have been uncovered, given the sophistication of the scam and the due diligence and checks Mrs H had already carried out.

I appreciate how Mrs H feels about this case and that this will come as a disappointment to her. And I'm also not suggesting that she did anything wrong herself. She has simply been the victim of a very sophisticated scam. But I don't think it would be fair to say any further action HSBC could reasonably have taken would have prevented the scam. And so I don't think it would be fair to require HSBC to refund the £6,950 payment she lost.

I've also looked at whether HSBC took reasonable steps to try to recover the money once it was told about the scam. Given Mrs H discovered the scam five days after having made the payment, unfortunately no funds were able to be recovered from the receiving bank account. Scammers usually remove funds immediately to avoid the possibility of them being recovered. So I don't think HSBC could have done anything further to get the money back at the time.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 April 2022.

Matthew Horner  
**Ombudsman**