

The complaint

Company S is unhappy that HSBC UK Bank Plc wouldn't reimburse the money they lost due to an authorised push payment scam.

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 November 2020 the accountant of S received an email purportedly from the company's director instructing them to make two payments, one for about £6,500 (to a different bank account) and another for about £10,000 (to an account with HSBC).

The accountant processed the payments as instructed. A little later they received another email asking them to make two further payments. The accountant became suspicious and contacted the director. At that point it came to light that S had been a victim of fraud.

S immediately contacted HSBC. The director says that it took nearly nine hours to get through to the right people at HSBC. The bank says that they took action as soon as they were made aware of the fraud but by that time unfortunately very little money remained in both the accounts to which the payments were made.

S would like HSBC to refund their loss, which totalled about of £16,500. They feel that HSBC had not done enough to prevent the fraud.

Our investigator was of the view that the complaint should be partially upheld. They said, in summary:

- The transactions were not unusual or out of character to S' normal account activity. So, there wasn't much HSBC could have done when the payment was made.
- S weren't able to contact HSBC for a few hours despite their best efforts. This shouldn't have happened. However, by the time S became aware of the fraud, the fraudsters had already removed most of the sums transferred to the recipients' accounts.
- However, HSBC could have done more in relation to the payment that went into one of their own customer's account. Therefore, it is fair that HSBC refunds that sum together with interest.

S accepted the investigator's opinion, but HSBC didn't. In summary it said:

- There is no basis for concluding that had the bank intervened and contacted their customer (the recipient) they wouldn't have given a reasonable explanation for the incoming and outgoing payments.
- S didn't do enough to prevent the fraud. In particular, the accountant could have noticed

that the email wasn't really from the director. Therefore, it is fair that the company be held at least partially liable for the loss.

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 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. Specifically, I'm mindful that it:

- must conduct their "*business with due skill, care and diligence*" (FCA Principle for Businesses 2);
- have a longstanding regulatory duty "*to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime*" (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001);
- must fairly and reasonably been monitoring accounts and any payments made or received to counter various risks including anti-money laundering and preventing fraud and scams. At the material time, those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage risk, e.g. through customer due-diligence measures and the ongoing monitoring of the business relationship including through the scrutiny of transactions undertaken throughout the course of the relationship;
- must have systems in place to look out for unusual transactions or other signs that might indicate risk of fraud. This is particularly so given the increase in sophisticated fraud and scams in recent years.

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 authorised push payment fraud, I will look into the circumstances of the case and decide, based on what I have seen, whether in that case HSBC could have fairly and reasonably done more.

Did HSBC do enough as the sending bank?

I agree with the investigator that in this instance there isn't anything specific to indicate that HSBC should have done more when S made the two payments. The payments were authorised by S and the amounts weren't unusual. S had frequently been making similar or larger payments.

The payments were to new payees but given the account history I think this alone wouldn't have given HSBC much cause for concern. Moreover, S didn't speak to or interact with HSBC's staff at the time of the payment. So, it isn't the case that the bank missed an opportunity this way to identify that the payment was being made in relation to a scam.

Irrespective of the above, it is possible to consider whether a customer is covered under the Contingent Reimbursement Model code which, on some occasions, provides for reimbursement of the amount even if the bank wasn't at fault. However, as explained by the investigator, S isn't covered by the code.

I have also considered whether HSBC ought to have done more to recover the payment.

S says that HSBC wasn't easily contactable, and though they spotted the fraud quickly they were effectively trying for nearly nine hours even to report it to the HSBC. It does appear that S had considerable difficulty in getting through to the right people at HSBC when they wanted to report the fraud. This shouldn't have happened.

Nevertheless, from the available information it seems that even before S realised what had happened, almost all of the money that was transferred to the two accounts were taken out by the fraudsters. Therefore, even if HSBC was contactable sooner, the bank couldn't have prevented that from happening.

Did HSBC do enough as the receiving bank?

This is in relation to the sum of £9,960.75 that was transferred into another account with HSBC.

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 have carefully reviewed everything before reaching my decision.

Having reviewed the submissions, I agree with the investigator that HSBC could have done more here, for the reasons they have explained. Briefly, the beneficiary's account was opened in late 2019. The account opening form stated that the applicant was a full-time student with no income. And until the receipt of the above payment, the transactions were mainly of low value. The payment from S was the largest ever received into the account. And it was withdrawn very swiftly. The outgoing payments too were untypical for the account. Given the historical activities on the account, this represented a sudden and uncharacteristic increase in spending.

Taking all of the above into account, I agree with the investigator that there was enough going on to the extent that HSBC could and should reasonably have made additional checks with its customer before it processed the payments.

I cannot be certain as to what would have happened had HSBC contacted its customer at that point, though it seems that when HSBC later tried to contact them, they were not contactable and the bank proceeded to close their account. HSBC has said that had it contacted its customer at the time the payment was made out of the account, it was quite possible that they would have responded and provided a plausible explanation because they would have wanted to access the money.

However, that had not happened and so I will have to consider what more likely would have happened had HSBC looked into this closely, contacted its customer and if they were reachable, asked all the right questions.

I consider that had the bank done so, it is more likely than not that the fraud would have come to light. I can't see how the beneficiary could have given a reasonable explanation for such a large payment to come into their account from S. I think it's most likely that the beneficiary wouldn't have responded plausibly or at all had HSBC reached out to ask about

the payments. This would have raised further alarm bells, and generally when there are concerns about a payment, banks do not take further action with the payment until they've had an answer and/or investigated matters.

Further, as the payer was also the customer of HSBC, it would have been easy for the bank to have contacted the payer and queried the genuineness of the transaction. Had it done so, I consider that the fraud would have been discovered. Moreover, any investigation by HSBC would also have allowed time for the fraud notification to be received – which was made to HSBC on the same day.

I appreciate that HSBC needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. I acknowledge the main perpetrator here is the fraudster. But overall, I think HSBC failed to recognise the unusual behaviour on the receiving account or respond to it appropriately, and therefore missed an opportunity to help prevent loss to S. Therefore, it is fair that they compensate S for this loss.

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 S. In this case, I cannot be certain about the cost to S of being deprived of the money because it might have used the funds in a variety of ways. Without any compelling reason to depart from our usual approach, I consider it fair and reasonable that HSBC pays S simple interest at 8% p.a. on the above sum.

Did S act reasonably in the circumstances?

HSBC strongly feels that S didn't. I have carefully considered what HSBC has said, but on this occasion, it is my view that S acted reasonably in the circumstances. I say this for the following reasons:

- S has explained that it is isn't unusual for the director to give payment instructions through email. This was more so as the staff were working from home due to Covid.
- There wasn't anything unusual about the content of the email. Also, the amounts instructed to be paid weren't unusual in relation to the normal payments.
- S says that there was nothing suspicious with the email address as it was delivered to the accountant. Only if someone clicked into the email address it could be noted that the address was actually different, but this wasn't something that was readily visible.

It is difficult for me to know now with certainty what the accountant actually saw, but I have no reason to doubt their explanation. It isn't unusual that the actual email address wasn't automatically visible. As S could be receiving several emails from various parties in a day, I think it would unreasonable to expect S to click each and every email address to check their genuineness. This is unless something was obvious or unusual. I haven't seen anything to persuade me that was the case here.

- The payment to the HSBC account came up as a 'match' and so there was nothing suspicious there. It appears that the second payment came up a partial match / mismatch. Looking at what had happened it seems that the fraudster gave most of the name correctly but when it came up as a partial match / mismatch the accountant went back and queried it with who he thought was the director. The 'director' asked to

add another word to the name at the end and then it came up as a match. Again, I don't think this in itself ought to have raised suspicion as this sort of issue could arise where a full name of the payee wasn't used in the first instance.

- When the accountant received another email soon after asking for payments to be made to two more (new) payees, they felt that this was unusual and promptly contacted the director. Thus, they didn't contact the director in relation to the first payment as on the face of it there was nothing suspicious but did so but as soon as they felt something was suspicious.

Taking all of the above into account, I am unable to conclude that S acted unreasonably and therefore I do not agree that they should share the loss as suggested by the bank.

My final decision

My decision is that I uphold this complaint. In full and final settlement of it, HSBC should:

Refund the amount of £9,960.75 (less any money already returned), together with interest at 8% simple p.a. Interest should be paid from the date S first raised the fraud with HSBC until the date of settlement.

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

Raj Varadarajan
Ombudsman