

The complaint

Miss P complains that HSBC UK Bank Plc won't refund money she lost after she fell victim to a scam.

What happened

The background to this complaint is well known to both parties and has been well detailed in our investigator's view, so I won't repeat it in detail. But in summary and based on the submissions of both parties, I understand it to be as follows.

In February 2021, Miss P received a text message from who she thought was Royal Mail requesting a fee for a delivery. Miss P was expecting a package and thinking this was genuine followed the link and provided details for payment. She became suspicious when she saw the payment wasn't going to Royal Mail, so she contacted HSBC to report she thought this was a scam and that she'd compromised her bank details. HSBC cancelled Miss P's debit cards and issued her new ones.

Two days later Miss P received a call from somebody pretending to be from HSBC. The number Miss P was called from appeared to be the same as HSBC's telephone number (although it was different by one digit). The caller told Miss P somebody had tried to make a payment from her account and she needed to move all of her money to keep it safe. Miss P has said the caller sounded professional and knew all about the HSBC app. Unknown to her at the time, Miss P was speaking to a fraudster.

Believing everything to be genuine, Miss P went ahead and made a number of transfers from her HSBC account, two of these went to account details provided by the fraudsters, with the remainder being sent to an account Miss P held with another provider (from which she then moved the funds on again to accounts controlled by the fraudsters). Miss P's other provider wasn't able to recover any of the funds Miss P lost.

To facilitate the payments Miss P transferred the entire balance of her ISA account (which she also held with HSBC) to her current account. The fraudsters also persuaded Miss P to increase her overdraft and take out a loan, explaining to her that she needed to do this, as if she didn't somebody else could.

In total, Miss P sent payments from her HSBC totalling £45,855, a breakdown of these payments is below;

Transfers to account details provided by fraudsters;

19/2/2021	£7,495
20/2/2021	£6,195

Transfer to account Miss P held with another provider:

19/2/2021	£2,000
19/2/2021	£500

20/2/2021	£1,250
20/2/2021	£2,500
20/2/2021	£2,750
20/2/2021	£2,250
20/2/2021	£2,495
21/2/2021	£4,375
21/2/2021	£2,200
21/2/2021	£2,250
21/2/2021	£100
21/2/2021	£2,195
21/2/2021	£3,000
21/2/2021	£2,000
22/2/2021	£2,300

Miss P has explained the scammer talked her through making the payments step by step and coached her all the way through, telling her that it was urgent that she moved the money. Miss P has told us at the time she was taking medication which severely impacted her logical thinking.

Miss P realised she'd been scammed when she tried to call the fraudster, but where the telephone number was one digit out she couldn't get through. So she then contacted HSBC and the scam came to light.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. HSBC agreed to refund Miss P £13,690, being the funds she had transferred directly to accounts controlled by the fraudsters. But it didn't agree to refund the remainder of Miss P's loss. In its final response to Miss P, dated 29 March 2021, it said the funds she'd sent to her own account were still under her control when they left HSBC, as such these were not covered by the CRM code. It added that as the payments had gone to an account she held, it couldn't try and recover the funds. HSBC did offer Miss P £100 compensation, by way of an apology for not giving her further details about scams when she'd contacted it regarding the Royal Mail text message she'd received.

Unhappy with HSBC's response, Miss P brought her complaint to our service. One of our investigator's looked into things and thought the complaint should be upheld in part. In summary he said that at the point Miss P was making a payment of £6,195 on 20 February 2021 a pattern of fraud had started to emerge, and there was a compelling case that at this point HSBC ought to have intervened. It was our investigator's view that had HSBC intervened at this point it would have made a difference and the scam would have been uncovered.

Our investigator went on to consider whether Miss P had acted reasonably in the circumstances and whether she too should carry some responsibility for her loss. But he didn't think she should, in summary he thought she had acted reasonably in making the payments and was mindful of the medication she was taking, which impacted her decision making. He recommended HSBC should refund Miss P the remainder of the money she lost, from the point she'd made the payment of £6,195 on 20 February, and that it should pay account interest on the funds lost that originated from her ISA, with 8% interest for the loss funded by the loan.

Our investigator issued his view of the complaint on 7 April 2022, giving both parties the opportunity to respond by 21 April 2022. Miss P responded and accepted the view. HSBC didn't respond. Our investigator contacted HSBC again on 9 May 2022, giving it until 16 May

2022 to provide its response. HSBC got back to our investigator on 9 May 2022, it apologised for the delay in responding and said it would try and respond by the deadline stipulated.

No response was received, so our investigator contacted HSBC again on 26 May 2022, giving it until 1 June 2022 to send its thoughts on his view. On 6 June 2022, where no response had been received, our investigator let both parties know that the complaint would be passed to an ombudsman for consideration. That had a deadline of 20 June 2022, but no response was received. Because HSBC hasn't responded to the Investigator's view or any follow up correspondence, the complaint has been passed to me to consider and issue a 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.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from HSBC, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the Investigator's opinion.

Having considered everything carefully I've reached the same overall conclusion on this complaint as our investigator. I do think it's finely balanced as to whether HSBC should have intervened sooner. Where Miss P has made a payment on 19 February 2020 for £7,495, this was larger than any payment she'd previously made within the months leading up to the scam. But I'm mindful banks like HSBC have a difficult balance to strike in how they configure their systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. There is a delicate balance to be struck. There are many millions of payments made each day and it would not be possible or reasonable to expect a bank to check each one. Here, I can see although this payment was high compared to Miss P's typical account activity, it didn't clear the account balance (which can sometimes be an indicator of fraud) and Miss P has made a number of transfers in excess of £1,000 in the months leading up to the scam.

But while, on balance, I think it was fair for HSBC to process the payments on 19 February 2021, I'm persuaded that a pattern of fraud was starting to emerge and given its obligations to protect customers from financial harm from fraud, I think there was enough going on, at the point Miss P was making a payment for £6,195 on 20 February 2021, that it ought to have concerns she may have been at risk of financial harm and I think it ought to have intervened.

I'm satisfied that had HSBC intervened it would have been able to identify that Miss P was at risk of financial harm from fraud. I say this as the circumstances had several hallmarks of this type of scam, including the payments to new payees, the unusual account activity and large payments being made from accounts in quick succession. HSBC also had the benefit of being aware, that just days before Miss P had contacted it to alert it that she was concerned she'd compromised her bank details.

For broadly the same reasons our investigator gave in his view, I am also satisfied there was no contributory negligence on Miss P's part, I think she was simply the unwitting and blameless victim of a clever and manipulative fraudster.

Putting things right

HSBC should now;

- Refund Miss P the remaining money she lost, from the point on 20 February 2021 where she made a payment for £6,195, being £29,665.
- Pay interest at the ISA account rate, for the payments where Miss P transferred funds from her ISA account to facilitate the payments out (to be paid from date of transaction to date of settlement).
- Pay 8% interest on the payments Miss P made on 21 February 2021 for £2,000 and £3,000 (from date of transaction to date of settlement)

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 9 December 2022.

Stephen Wise
Ombudsman