

The complaint

Mrs L brings a complaint on behalf of the estate of Mr C. She complains HSBC UK Bank Plc didn't prevent Mr C from losing money to a scam.

What happened

Mr C was disabled, and his wife used to help manage the household finances. She passed away and the bank were notified of this in April 2017. In December 2017, Mr C started sending payments to individuals and it transpires he was involved in a romance scam. This only came to light following Mr C's death and is detailed in interventions carried out by other banks into payments Mr C was making.

The payments were made by Mr C between July 2017 and September 2019 from two different accounts. It was around July 2019 that HSBC says it was made aware of Mr C's vulnerabilities and that he then decided to close his accounts and move his banking arrangements elsewhere a couple of months later. The payments were to individuals, PayPal, World Remit and PayAngel – the latter both provide money remittance services. The payments were also made by various different methods – international payments, debit card and bill payments. And the payments made to PayPal were also debit card payments, but due to the way accounts are set up with PayPal, these show as direct debit transactions. I haven't set out the individual transactions in question, as they are numerous.

Following Mr C's death, Mrs L made a complaint about the transactions and that HSBC didn't take any steps to intervene into what she thought were unusual transactions for his accounts. HSBC didn't uphold the complaint as it said it wasn't evident from the information provided that a scam had taken place. It did however, pay £200 for its error in not following up on the concerns sooner.

Our investigator didn't uphold the complaint either. Although she felt an intervention from the bank should have taken place, she didn't think that would have stopped Mr C making payments. That's because later interventions by other banks didn't have any effect, and Mr C had gone so far as to threaten his own life in ensuring payments were made.

Mrs L has asked for the matter to be referred to an ombudsman. In doing so, she has made reference to the Banking Protocol. She has also said it's unfair to rely on her father's later actions with other banks to decide whether Mr C would have taken any note of interventions by HSBC had any been carried out, particularly as HSBC is the first bank the scam payments were made from. In short, she is satisfied Mr C would have acted on any concerns had HSBC raised any and she doesn't believe it went anywhere near far enough in protecting him.

I issued my provisional decision on 31 May 2022 explaining why I was minded to uphold this complaint in part. I said:

I would firstly like to acknowledge how devastating it must have been for Mrs L to discover that Mr C had been taken advantage of so soon after losing his wife. I understand her strength of feeling in pursuing this matter. But despite my natural sympathy for what has

taken place, I can only uphold this complaint if I find HSBC ought to have intervened in any of the payments made, and I'm satisfied that intervention would have resulted in payments being stopped.

In asking for an ombudsman's decision, Mrs L has referred to the Banking Protocol. I'm afraid the protocol only applies to transactions carried out in branch. None of the payments disputed were branch transactions and so the protocol isn't relevant. And whilst I accept Mrs L's point the pandemic might have meant customers couldn't attend branch for a period, I'm mindful that Mr C closed his accounts with HSBC in September 2019 – six months prior to the pandemic. This, therefore, has no bearing on my consideration.

I have also noted that some transactions carried out in June and July 2019 were bill payments, a form of faster payment. That means those transactions fall under the Lending Standard Board's Contingent Reimbursement Model – CRM – which I'll come onto later in this decision.

My first consideration is whether Mr C was scammed, particularly as HSBC seem to doubt this. However, as explained by one of our investigators, Mr C had lost money from other bank accounts with several other providers. And the information provided during our investigations has shown that other banks had concerns Mr C was falling victim to a romance scam and had tried to intervene in those payments. I understand it was also the view of the police that Mr C had fallen victim to a romance scam. I'm satisfied I can fairly rely on this information to show that Mr C has been scammed, and it's disappointing HSBC seems to think information that comes to light later shouldn't be taken into account; a surprising position given many people who have been scammed only realise after it's happened.

Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer even where they were duped into making that payment. There isn't any dispute that Mr C authorised the payments in question and so he is presumed liable for them in the first instance.

However, and as set out by the investigator, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

I've paid particular attention to the BSI Code PAS 17271:2017 which was introduced in October 2017, before the majority of the payments in dispute were made. And this code built upon and codified standards and practices banks and other payment services providers were already using. And so its principles are relevant to my consideration of any transactions prior to its introduction also.

The BSI code sets out some indicators which might alert a bank to its customer being at risk of fraud or financial abuse. This includes such things as a sudden increase in spending, multiple password attempts, logins in from new devices with multiple geographical locations and such like.

Mr C made payments from two different accounts, account ending 7962 and 3395. The majority of payments were made from 3395, and I will deal with each in turn.

7962

HSBC has provided statements for this account. And having looked over those statements, I can see that Mr C was regularly making payments from the account to various different businesses and to individuals. He also used a wide range of payment methods, from his debit card, to transfers and bill payments. Mr C also regularly made payments in excess of £1,000, and on a fairly often basis, they were much higher.

The only transactions I can see that have been disputed for this account are those to World Remit which took place on 13, 14 and 17 June 2019. Although there was more than one transaction on each day to World Remit they were of relatively small value, even when added together, compared with other spending on the account. I also accept these were to a new payee, but I don't think there was a substantial change to the operation of the account, or that the transactions were so unusual or uncharacteristic that they were suspicious or that HSBC ought to have suspected Mr C might have been a risk of financial harm. I therefore find no basis on which to find that HSBC ought to have intervened in them.

It follows that I don't find any basis on which to ask HSBC to reimburse these transactions to Mr C's estate.

3395

HSBC has also provided the statements for this account. And I have looked over these. Again Mr C was making regular use of the account, both for payments out and to receive credits in. He was making payments to businesses, named individuals and to other banking and credit providers. And like his other account Mr C used various payment methods to make those payments. There were also payments of low value, and payments up to £10,000.

The payments in dispute were similar – to legitimate businesses (PayPal, World Remit etc) and to named individuals. The payments were also made using various methods and range from mere pounds at the smallest transaction to just over £5,000 at the largest. To that extent, the payments in dispute were no different to the existing operation of Mr C's account.

I am aware that on occasion Mr C sent more than one payment in a day. This is quite often seen with the PayPal transactions but also with some of the others. With regards to PayPal, it's my understanding that in order to pay this way, Mr C would have needed an account with PayPal, and it appears he linked his card to his PayPal account in May 2017 (shown as a PayPal code on the bank statement). This enables a customer to pay people or pay for goods and services through PayPal. I don't think it could have been known to HSBC what the ultimate destination of the money was – and given payments can be made like this for goods ordered on-line, it's entirely possible some of these are genuine transactions.

As Mrs L is probably aware, PayPal is a global payment provider with millions of customers. That Mr C became one of those customers wouldn't be unusual. The payments through PayPal ranged from just over £2 at the smallest to £1,000 at the largest. Most payments were for under £400 even when adding up multiple transactions where those occurred. And even where more than one payment was made to PayPal in a day, it was weeks or sometimes months before further payments were made.

Between October 2018 and July 2019 Mr C made a number of bill payments to different named individuals, predominantly to one individual I'll refer to as 'G'. Payments to G were numerous but only on occasion was more than one payment made in a day. The smallest payment to G was £10 with the largest individual transaction being £500. There were four payments each to other individuals I'll refer to as 'M' and 'R' and these were also for transactions of £500 or less. Whilst with the benefit of hindsight these might be easy to spot given the knowledge that a romance scam had taken place, I'm not persuaded any of these

transactions were or ought to have been suspicious to HSBC at the time they were made; Mr C could and did make regular transactions to individuals.

I have also considered the larger transactions that were sent to 'E' and 'S' (There are two different Es but suspicions are they were the same person). These payments were international and were for far higher sums than the other transactions. And the payments to E were in December 2017 into January 2018 and beyond. These payments were for between £132 and just over £5,000. In the 12 months leading up to these transactions Mr C made several large transactions out to individuals – e.g. £9,000 in February 2017, £6,000 in August 2017 and other large transactions between. I accept it appears these payments went to family members or relatives, but that wouldn't necessarily have been known to the bank. Given Mr C made other large transactions to individuals, for higher sums, sometimes much higher, I don't find the payments to E or S were unusual.

I am aware these were international payments which Mr C hadn't made from this account in the preceding 12 months. But I'm not persuaded the transactions being international makes them so unusual or uncharacteristic (given the other similarities in the account operation) that I think HSBC's fraud alert systems ought to have triggered.

I have taken into account that Mrs L has told us Mr C was vulnerable when payments were made. I accept that HSBC ought to have known Mr C was disabled as I understand he had visited a branch on numerous occasions. But being disabled doesn't necessarily mean vulnerable in handling money matters. I also accept that Mrs C's death would have been difficult for him, particularly as she used to help with that. But I haven't seen any persuasive evidence that HSBC was notified before it said (July 2019) that Mr C was vulnerable or had difficulties with his finances, nor am I aware that any additional provisions for this were put in place by his family. As such, it's not something HSBC could fairly have taken into account.

It follows that I find no persuasive evidence HSBC breached its duty to Mr C or that it shouldn't have executed without undue delay the payment requests he made and authorised. There is a reasonable balance to be struck for the benefit of all payment-service users and/or commercial efficiency – and HSBC did also have a duty to execute a properly authorised payment request within a reasonable period.

Although I haven't found that HSBC did anything wrong at the point of executing the payments, that isn't the end of the matter.

On 28 May 2019 the CRM was introduced. This is a voluntary code that a number of banks have signed up to, including HSBC. Under the CRM HSBC should reimburse customers who are victims of authorised push payment scams except in limited circumstances. The code doesn't apply to card payments, international payments, nor any payments made before its introduction. So it doesn't apply to a lot of the payments in dispute. However, there are four payments to R in June 2019, and five payments to G in June and July 2019, which are bill payments and so are covered under the code. These total £1,194.94.

It isn't clear whether HSBC took its obligations under the code into account when considering this matter, and when asked by our investigator it didn't respond to the questions asked about it.

It is for HSBC to establish that a customer failed to meet a 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 or business with whom they transacted was legitimate.*

HSBC hasn't provided any information to show Mr C ignored an effective warning, or that he didn't have a reasonable basis for belief in the payments he was making. Therefore HSBC ought to have refunded the transactions set out above, totalling £1,194.94 at the point the dispute arose.

I'm therefore currently minded to make this award.

HSBC has responded to say that although it doesn't agree with all of my findings, as a gesture of goodwill it will settle the complaint in accordance with my provisional decision.

Mrs L has also responded. In summary, she disagrees the transactions were unusual and restates her belief HSBC should have done a lot more to protect Mr C. In particular she refers to the international transactions to E and S being different to other large payments which were to family members and she has provided further information she has come across about the scam. Mrs L also queries why a payment to World Remit of £102.99 left the account on 14 February 2019 to be returned the following day and two payments of £501.98 were transferred twice and returned twice on 16 June 2019. Mrs L also says she confirmed to an investigator that the PayPal transactions were not part of this dispute.

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.

I have considered the responses to my provisional findings very carefully. Having done so, I've not been persuaded to alter my provisional decision.

I thank Mrs L for confirming the PayPal transactions aren't in dispute.

I appreciate and understand she feels very strongly that HSBC ought to have intervened, particularly into the larger international transactions. I had already considered whether these transactions were so unusual or uncharacteristic such that I thought HSBC's fraud systems ought to have triggered. And although I understand Mrs L doesn't agree with my findings, she hasn't provided any new evidence or arguments for me to consider. As previously explained whilst other large payments might have been to family members or relatives, this wouldn't have necessarily been known to the bank. I'm not persuaded a payment being international automatically means it's 'unsafe' or that it should have alerted the bank to something being wrong – thousands of international payments are made every day, and by customers for the first time.

Mrs L has also referenced two specific sets of transactions. However, I note those made in June 2019 for £501.98 were to PayPal, which she has confirmed are no longer in dispute. This therefore has no bearing on my findings. And in relation to the other, there could be any number of reasons for a payment to be sent back to an account the following day, from an incorrect destination account number being entered, to the recipient returning the funds as they only needed them for a short period. I'm not persuaded this ought to have triggered any fraud alerts either.

Mrs L has provided further information about the scam and the people connected with it. But as per my provisional findings, I don't doubt that Mr C was scammed. And whilst I fully accept the impact being scammed has had, my findings remain that I don't find HSBC ought to have intervened in any of the payments before they were executed.

HSBC has agreed as a gesture of good will to the reimbursement set out in my provisional findings. However, under the CRM this ought to have been refunded unless there was an applicable exception. I found no applicable exception within the CRM and HSBC hasn't provided any new evidence or arguments for me to consider. I therefore require it to reimburse £1,194 to Mr C's estate.

My final decision

For the reasons given, my final decision is that I uphold this complaint in part. I require HSBC UK Bank Plc to reimburse £1,194 to Mr C's estate. Payment should be made within 28 days of being notified of the estate's acceptance of the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 29 July 2022.

Claire Hopkins
Ombudsman