

Complaint

F, a limited company and law firm, complains that HSBC UK Bank Plc didn't do enough to protect it when it was targeted by fraudsters. It is represented by Ms F, its only director. For simplicity's sake, I will generally refer to Ms F throughout the decision.

Background

F is a law firm and uses an account with HSBC to handle client money. In early 2020, it was the victim of an email interception scam. It needed to make a payment from its client account. Ms F visited a branch to make the payment in person. Unfortunately, the account details to which this payment was to be made were provided to Ms F by email. That email hadn't been sent by her genuine client, but by a fraudster who had substituted the account details for their own.

The following day, the intended recipient of the payment told Ms F that no money had been received. She realised that she must have fallen victim to a scam and so notified HSBC straight away. HSBC said it wouldn't pay a refund. The payment had been authorised. It had simply carried out its legal obligation to process it.

Ms F had made a simultaneous claim on her firm's professional indemnity insurance. The insurer considered the claim and agreed to settle F's outstanding liability to its client. HSBC later changed its position on the complaint. It wrote to say that it was satisfied that Ms F had carried out all necessary checks before making the payment and so it was now willing to pay a full refund. It also said that it would pay 8% simple interest per annum on this sum. That refund has now been paid and Ms F has provided statements to show it was promptly remitted to her insurer.

However, Ms F remained unhappy that HSBC was only offering to compensate her by paying 8% simple interest on the payment. She doesn't think this genuinely reflects the impact the scam has had on her business.

She's pointed out that, when she came to renew her professional indemnity insurance, her annual premium increased significantly. She says (and has provided supporting correspondence from her insurance broker and underwriter) that the payment of a claim under the policy is the principal reason why the premium has increased.

She also says that she's spent a considerable amount of time communicating with HSBC and this service about the complaint. She thinks she should be compensated for this time and that the sum awarded should be calculated by reference to her hourly rate as a solicitor in private practice. She also considers that she should be compensated for the reputational damage caused by HSBC in failing to prevent the scam.

The complaint was looked at by an Investigator who thought HSBC's offer was fair and reasonable. She didn't think she could say that HSBC was responsible for the increased insurance premium. Even if it had paid compensation before the insurance claim could be considered, F was still required to notify the insurer that an insured event had taken place, even if there was no intention or need to make a claim.

In respect of the inconvenience caused, the Investigator said that this service doesn't typically make an award for inconvenience if that inconvenience was the inevitable result of making a complaint and following it through the normal process – something which is inherently inconvenient. She didn't think 20 hours of Ms F's time was outside the bounds of what one would normally expect. She was also unpersuaded that there was any concrete evidence that F's reputation had been damaged. Overall, she wasn't persuaded to recommend HSBC pay any further compensation.

Ms F responded to the Investigator's opinion at length and reiterated her position on the losses she considers her firm to have suffered. In addition, she was unhappy that, in an email exchange between the Investigator and the bank, HSBC suggested that she hadn't paid the refund she received from HSBC back to the insurer and that she could be said to have benefitted from being a victim of the scam. This claim was not well founded. Nonetheless, Ms F was very unhappy at the insinuation that she would've retained the sum and thinks HSBC should now compensate her for hurt feelings and damage to her firm's reputation. In total, she thinks this justifies an additional sum of £5,000.

As Ms F disagreed with the Investigator's opinion, the complaint was passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on 23 June 2022. I wrote:

It is common ground that F authorised the scam payments. Ms F was tricked by the scammers into instructing HSBC to make that payment on the basis that she was paying a legitimate client.

This was an 'authorised payment' even though F was the victim of a scam. Nonetheless, under the Payment Services Regulations 2017 and the terms and conditions of the account, F is presumed liable for the loss in the first instance. However, taking into account the law, regulators rules and guidance, relevant codes of practice 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 made 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.*

The question I have to consider is whether HSBC ought to have recognised the increased risk of fraud when Ms F gave it a payment instruction and intervened in response to that risk. Ms F says that HSBC should've carried out more checks on the receiving account and that she'd paid a £30 fee for enhanced security protection. However, at the time this payment was made, HSBC hadn't introduced a 'Confirmation of Payee' process and so it wasn't possible for it to check the name on the receiving account. From what HSBC has told me, the £30 fee was a standard charge for processing the payment and wasn't connected with any increased security provision.

Nonetheless, I'm satisfied that the payment was sufficiently out of character that HSBC should've questioned it before allowing it to be processed. I've looked at the statements for the account. This was the largest payment made from the account during the period covered by those statements. The next largest payment was for £10,800 on 13 September 2019 – roughly half the value of the scam payment. In addition to that, the scam payment was made to a new payee. I think the increased scam risk ought to have been apparent.

The payment was made in branch and so I think a bank employee ought to have taken the opportunity to intervene at that point. If Ms F had been asked about the payment and how the payment details had been supplied, it's likely the bank employee could've flagged the risk of an email interception scam and recommended that Ms F verify the account details verbally before making the payment. I think it's highly unlikely that she'd have agreed to make the payment without first checking. I don't think she'd have taken a risk with client money.

HSBC should have recognised the risks associated with the payment and intervened before processing it. If it had done so, I think the scam would've been prevented. HSBC has already refunded the money that was lost to the scam, which Ms F has transferred to her insurer. But I also think HSBC should compensate F for the foreseeable consequences of its failure to intervene.

I can see from the paperwork at the time the account was set up that it was designated for us as a client account by a legal practice. I think it was foreseeable that a failure to prevent a scam such as this one would entail wider consequences than a mere direct loss to the account holder.

Ms F says that the claim has led to a significant increase in her annual premium. Her broker set it out in the following terms:

The profile of the firm is considered as low risk and have been paying minimum premiums to Insurers for the Professional Indemnity Insurance. In the absence of this claim payment, there is no reason why Insurers would not have offered renewal terms on the same basis as the previous year [...]
Another impact was that the Insured had to complete a comprehensive presentation to Underwriters to explain the position with regards to the wrongful transfer. Without any admission of the bank's wrongdoing this had resulted in other Insurers not offering alternative terms.

Furthermore, a letter from the underwriter to the broker said:

"It is not usual for us to comment on the specifics of a monetary loading but I do agree with you that in these circumstances ... your assessment of the impact of this claim on the renewal premium is accurate."

This is persuasive evidence that the claim led to a significant increase in the premium and that it was the predominant cause of that increase. It's not straightforward to work out exactly how much of that increase was a result of the claim and how much was due to other factors.

I also can't know for sure how long the claim will impact the firm's annual premium. Nonetheless, I think HSBC needs to do something in recognition of this increased cost. For simplicity's sake, I'm intending to recommend that it pay the full increase in the insurance premium the firm paid on renewal (but not pay anything for subsequent years). HSBC has argued that F chose to make an insurance claim, but that's not the case. The terms of the insurance made it clear she was obliged to notify the insurer, even if she didn't intend to claim.

I've also considered whether HSBC should pay the firm compensation in recognition of the inconvenience it suffered here. Ms F has set out the exact number of minutes she's spent pursuing the complaint and thinks she should be compensated based on her hourly rate. I'm not minded to agree with this approach for similar reasons to those explained by the Investigator. Nonetheless, I don't think HSBC has handled matters well. It applied a very narrow interpretation of the complaint when it considered it in February 2020 by saying that, as the payment had been authorised, the complaint had to be rejected. HSBC's handling of the complaint clearly did cause the firm a significant degree of inconvenience. I'm inclined to recommend an additional sum of £500 in compensation.

Ms F has said she thinks she should be awarded a further £5,000 to reflect hurt feelings and reputational damage based on the email exchange between our Investigator and HSBC. I accept that the email sent by the case handler at the bank was upsetting to Ms F. However, I'm not persuaded that the intent of that message was to question her integrity in the way that she's suggested. I think it was legitimate for it to check that the funds had been repaid to ensure that there was no risk of double recovery on the part of F. In any event, I can only make an award that recognises HSBC's impact on the eligible complainant. In this instance, the eligible complainant is a limited company, rather than Ms F. A limited company obviously cannot suffer distress and so I can't reasonably make an award in this category.

Finally, I've not been provided with any evidence to suggest that the reputation of F has been harmed by the fact that the HSBC failed to prevent the scam and so I'm not intending to make any award in that category.

Both parties responded to my provisional decision in detail. I've summarised those responses below.

HSBC argued that:

- It should only be liable for (at most) half of the increased insurance costs because F should've taken greater care to protect itself from fraud.
- F ought to have had a general background awareness of the risks of email interception scams such as this one and taken steps to guard against them, such as calling the intended recipient of the payment to check the account details.
- The firm's insurance costs haven't necessarily increased because a claim was made – it's possible that the insurer has recognised that the firm didn't have adequate

security measures in place and was therefore a higher risk for a potential future claim.

- No excess should be payable as part of any award. When HSBC paid a refund, F paid the value of the claim to the insurer but retained the excess.

Ms F responded as follows:

- She didn't think it was reasonable for HSBC to have questioned the evidence she provided from her insurance broker and to have been asked to contact the underwriter. It wasn't justified to mistrust her professional advisers.
- Although the £30 fee was a standard charge for processing the payment in branch, the account had a value limit for electronic payments. Payments above that threshold had to be processed in branch for security and fraud prevention reasons. In this instance, it offered her no protection against fraud. She says there was no other reason to have such a limit on the account.
- Rather than questioning our Investigator on whether F had paid the refund to the insurer, HSBC could've simply looked at statement data to confirm that it did.
- HSBC didn't provide any information about a complaints process nor did it invite her to complain – if a pathway to a complaint had been provided sooner, a great deal of time and effort could have been saved.
- I should increase the award of £500 for distress and inconvenience and include a sum to recognise the time Ms F had to spend on pursuing this complaint with HSBC.

I've reconsidered the complaint in the light of the parties' further submissions and I'm not persuaded to depart from the conclusions I set out in my provisional decision and I'll explain why.

I'm unpersuaded by HSBC's argument that F should be considered partially responsible for its losses on the grounds that it should've had a general background awareness of the risk of email interception scams or that it must have had insufficient processes in place to protect against fraud risk. It is true that solicitors and their clients are often targeted by scams such as this one, particularly if they're involved in the movement of large sums of money relating to the transfer of property. But that isn't the case with F. The statements I've seen show that it wasn't regularly handling large sums of client money and so I don't find it surprising that Ms F didn't have a detailed knowledge of email interception scams. Despite Ms F's professional background, there was still a significant asymmetry of knowledge between the parties here and the onus was on HSBC to protect F from financial harm due to fraud.

It's correct that a premium can increase for a multitude of reasons. Nonetheless, the evidence that F supplied from the underwriter makes it clear that the claim was the principal reason for this increase and I can see that it had been insured for a considerable number of years without making a claim.

I don't agree with Ms F that it was unreasonable for HSBC to question the evidence that she'd provided from her insurance broker or to ask that she seek confirmation regarding the impact on the premium from the underwriter. The pricing of insurance can be highly complex and it's the underwriter who is responsible for assessing risk and determining the premium. F's insurance broker wasn't necessarily the best placed person to comment authoritatively

on why the insurance premium had increased, albeit they had clearly identified that the claim being paid was a significant concern for the underwriter.

I understand that F's account has a value limit for electronic payments. Such a restriction can be useful from a fraud prevention perspective. While it didn't protect F from an email interception scam, it could be an effective safeguard if the security credentials associated with the account were compromised and fell into the hands of fraudsters.

I appreciate the frustration that Ms F has described about the way HSBC handled things. I agree, for example, that it could have checked whether she'd remitted the refund to the insurer. HSBC did offer an explanation to our Investigator for this oversight and so I'm satisfied that the request wasn't made in bad faith. In any event, this service doesn't have jurisdiction over complaints handling in and of itself. The rules that apply to this service are published in the Financial Conduct Authority Handbook and are known as the DISP rules. DISP 2.3.1R specifies the activities that this service has the power to consider and complaints handling isn't among them and so I can't reach a finding on that point.

I also don't agree to increase the award to reflect the inconvenience F experienced in pursuing the complaint. It's rare that we will make an award for costs incurred in bringing a complaint because this service is free to use. We're also disinclined to ask businesses to compensate customers for the inevitable inconvenience that is associated with having the need to make a complaint. Calculating an award for non-financial loss necessarily cannot be scientific. However, this service has published guidelines giving example scenarios and indications as to what an appropriate award would be. I considered these examples carefully when deciding to recommend £500. I'm satisfied that to award a larger sum would be significantly out of line with those guidelines.

I accept the observation HSBC has made regarding the excess.

Final decision

For the reasons I've explained above, I uphold this complaint.

HSBC UK Bank Plc should now pay F:

- The amount of the increase in the annual insurance premium.
- £500 in recognition of the inconvenience that was caused to the firm.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 31 August 2022.

James Kimmitt
Ombudsman