

The complaint

A company which I will refer to as F is unhappy that HSBC UK Bank Plc wouldn't reimburse the money which they lost due to an authorised push payment scam. They say that HSBC did not carry out adequate security checks and allowed a fraudster to receive and withdraw a large sum of money.

What happened

Briefly, as I understand it, F was looking to buy some auxiliary industrial equipment from a company in Italy for one of its projects. Unknown to F their supplier's email was hacked and the fraudster advised F to make a payment of £100,000 to an account with HSBC. The fraud came to light a few days later and F raised it with their bank who in turn contacted HSBC. Unfortunately, HSBC could only recover about £18.

F complained to HSBC who did not uphold their complaint. The bank said that it didn't do anything wrong and it attempted to recover all the money it could, on being advised of the scam.

One of our Investigators reviewed the complaint and were of the view that it should be upheld. They said, in summary:

- The receipts from F and the outgoing payments soon after, were unusual to the account. So, HSBC could have done more here to intervene. Had it done so the fraud could have been prevented.
- That said, a 'no match' Confirmation of Payee warning was presented to F when they attempted to make the payments. But they continued with the payment, so it's fair that they bear some responsibility for the loss.
- To resolve the complaint, HSBC should reimburse F £49,990.60, being 50% of the amount lost after the recovery of £18.80, together with simple interest at 8%. The interest should be paid from the date HSBC was advised of the fraud to the date of settlement.

F accepted investigator's opinion, but HSBC did not. In the main it said:

- Had the bank intervened and contacted its customer to question some outgoing payments, the focus would've been to ensure its customer wasn't at risk of financial harm from fraud. There was no sufficient cause at the time to see proof of entitlement documentation for the receipts at that point. But even if the bank had sought proof, on the face of it, the customer did have documents which showed an entitlement to the funds. Had they given those documents at the material time, given that the bank hadn't yet received a notification of scam, it is more likely that the bank wouldn't have concluded that its customer was defrauding a third party.
- The principal cause of the F's loss was their own negligence in ignoring the negative Confirmation of Payee (CoP) result and other red flags when making the payment. The payment wouldn't have reached HSBC customer's account had F appropriately dealt

with the CoP result. So, it is fair that F bears the entire 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.

Did HSBC miss an opportunity to prevent the loss to F?

HSBC 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;
- has 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);
- must fairly and reasonably be 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 based on what I have seen, decide whether in that case HSBC could have fairly and reasonably done more.

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 F that I've 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 already explained.

Briefly, as I understand it, the recipient business account was opened in July 2020. Since opening, there was no activity at all on the account until the payments arrived from F in October 2020. Five large payments, each for £20,000 arrived in quick succession. Thus, a total of £100,000 was received in one day, from the same payer. This was then quickly followed by a series of large outgoing payments.

Given this, I agree with the Investigator that there was enough going on here that ought to have prompted HSBC to take a closer look at what was happening, at least when the first

payment (for about £10,000) was made out of the account, if not earlier. In fact, it looks like HSBC did intervene on a couple of occasions when the outgoing transactions started happening. It also appears that it spoke to its customer twice. Unfortunately, the bank isn't able to give us a copy of the recording of those calls, so it is difficult to know what was discussed during those calls. However, it appears that this was essentially to ensure that its customer wasn't a victim of fraud.

It may be, to start with, the bank's objective was to look out for unusual transactions going out of the account in order to protect its customer from the possibility of fraud. But that gave the bank an opportunity to look more closely at what was going on. Had it done so, it would have noticed that after no activity for few months on a newly opened account, several transactions of unusually large amounts were received in quick succession. It would also have seen that there was a mismatch in the payee's name in each one of those incoming transactions. I think this was enough to have given the bank sufficient cause for concern, and enough to have prompted a further investigation into the incoming payments.

The bank says that even if it carried out further investigation, their customer would have been able to produce documentation to show that the payments were indeed due to them (as this is what they subsequently did – though by that time the bank was already alerted to the scam). And given that there was no indication of fraud at the time the bank intervened, those documents wouldn't have raised any suspicions.

I agree that had the bank questioned its customer earlier about the source of funds, they most likely would have produced the same documents that they did later. These were an 'agreement', which stated that an invoice would be raised 'after each stage', and five invoices each for £20,000.

So, on the face of it, each invoice was raised following some work done by the bank's customer. If so, then it is reasonable to expect that, beforehand, there was sufficient activity on the bank account such as payment to staff and other overheads. But there was no activity at all on the account since it was opened. There were no payments at all such as for materials, salary, direct debits, utility payments and everyday expenses which one could reasonably expect to see in a business account. The first set of transactions in the account since it was opened were the five payments from F.

I can't see how the bank's customer would have explained the receipt of such a large income before any incurring any expense at all. It wasn't as if the payments were by way of advance. That is not what the agreement or the invoices stated.

Further, as stated by the Investigator, had HSBC carried out proper checks at the time, it would have noticed that the payee name on the payment instruction was completely different to that of its customer's. A quick internet search would have revealed that the named payee is a "world leader" in production of systems for storage, transport and treatment of polymers, plastic and food powders. The Companies House Register states that this company is engaged in wholesale machinery and equipment.

On the other hand, the invoice produced by the bank's customer was for installation of CCTVs and some software. I am not persuaded that HSBC's customer would have been able to provide a satisfactory explanation for this anomaly.

The bank said that the information on The Companies House Register would not help to show whether the two companies were "partnered or linked". However, the bank's own records indicate that its customer was a newly formed company, with operations entirely in the UK and that it was not part of any franchise or family groups. And why F would pay to a different company instead of the company that raised the invoice?

The bank also said that if questioned, its customer would likely have said they had no knowledge as to why the payee name had been input incorrectly by F. It is difficult to see why F would make an error like this. And it wasn't just for one transaction. It was for each of the five transactions. I am not persuaded that this would have been a satisfactory explanation had the customer said so.

I have taken into account what the bank has said, and I acknowledge that it is difficult to know for certain what would have happened had the bank intervened early on and questioned its customer about the source of incoming payments. But taking all of the above into account, I am not persuaded, on balance, that the fraudster would have been able to provide a credible explanation given the anomalies.

Generally, when there are concerns about a payment (or payments), banks do tend to thoroughly investigate the matter. And had HSBC done so, I think it would have, during this time received the scam notification from the remitting bank.

Thus, I think the bank missed an opportunity here to help prevent the financial loss to F. Therefore, it is only fair that it compensates F for its failure.

Did F act reasonably in the circumstances?

For completeness, I've also considered whether F should bear some responsibility for their loss due to any contributory negligence.

As I understand it, it was the supplier's email which was hacked and as such the email address from which F received the emails weren't suspicious. As pointed out by F, the fraudster was able to engage in discussions without raising suspicions.

That said, I agree that it was somewhat unusual for a big supplier to have two bank account changes within a short period of time. Also, an earlier payment had successfully been paid into the first new (genuine) account and so the fraudster's excuse that the bank was still finalising paperwork for that account and asking F to make payment to a different account was somewhat odd. And then there was a 'no match' Confirmation of Payee message as well.

So, I think there was some failure on part of F. However, this does not negate the fact that HSBC too missed a subsequent opportunity to prevent F's loss, as described above.

In the circumstances I consider it fair that the loss is shared equally between HSBC and F

Putting things right

As noted at the outset, the total payment made to the fraudster was £100,000. Of this I understand that only £18.80 could be recovered and returned to F. If so, the loss to F works out to £99,981.20.

For the reasons I have given, this loss should be borne equally by HSBC and F.

This means HSBC should reimburse £49,990.60 to F. It should also pay interest on this sum. 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 F. In this case, I cannot be certain about the cost to F of being deprived of the money because it might have used the funds in a variety of ways. It is however clear to see that this was a large sum of money and the loss has had a big impact on the company. In the circumstances, without any compelling

reason to depart from our usual approach, I consider it fair and reasonable that HSBC pays F simple interest at 8% p.a. on the £49,990.60, and that the interest be paid from the date the bank was notified of the scam to the date of settlement.

My final decision

My final decision is that I uphold the complaint. In full and final settlement of it, HSBC UK Bank Plc should pay £49,990.60 to F together with simple interest at 8% p.a. Interest should be paid from the date the bank was notified of the scam to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 14 April 2023.

Raj Varadarajan
Ombudsman