

The complaint

Ms C and Mr G complain that HSBC UK Bank Plc didn't do enough to prevent the loss they suffered when they sent money to an HSBC account as the result of a scam.

Ms C and Mr G have been helped with their complaint by a representative, Miss G. And whilst the loss comes from a joint account belonging to Ms C and Mr G, for ease of reading, I'll mostly just refer to Mr G.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In October 2020 Mr G sent a payment from his own bank which I'll refer to as 'S' for the equivalent amount in Euros of £285,000. At the time he believed this to be a payment to a firm of solicitors in the UK to assist his daughter with the purchase of a property. The payment arrived in an account held with HSBC.

Mr G later learned that a scammer had been emailing his daughter impersonating the solicitor. So when she'd shared the account details to pay, these were those provided by the scammer and not the genuine solicitor.

As soon as Mr G became aware that the wrong account had been paid, he reported this to the relevant authorities including S and directly to HSBC. Ultimately HSBC said that some funds had been secured.

Mr G complained to HSBC that they'd not done enough to prevent his loss. HSBC didn't agree they were liable, and the matter was considered by one of our Investigators. He concluded that HSBC could have prevented the loss and should provide a full refund plus 8% interest. Mr G accepted this outcome, but HSBC didn't.

In the meantime, following the provision of an indemnity from S, HSBC returned around £188,000 to S in January 2023. HSBC asked that an Ombudsman review the complaint. In February 2023 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm intending to reach a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision."

I'm satisfied that HSBC correctly followed their account opening process for the account that received money from Mr G. I don't think there was anything at that stage that would have indicated that the account might later go on to be used in connection with a fraud or scam. So, I don't think HSBC could have prevented Mr G's loss in relation to the opening of the account."

In his submissions Mr G has suggested there was a delay in his payment crediting the recipient account as he'd entered an incorrect IBAN number. He thinks this means HSBC could have recovered all his money as soon after providing the correct IBAN, the scam came to light and a recall request was sent. But this isn't supported by the evidence from HSBC which shows his payment arrived in their customer's account on 2 November 2020. What I think Mr G may be referring to is the contact he had with S after HSBC had been in touch seeking to confirm if the payment was genuine (after they'd blocked the account). I understand Mr G initially confirmed that it was genuine, before shortly afterwards becoming aware of the scam when his daughter informed him the solicitor's emails had been compromised. But these events all took place after the account had already been blocked.

In either case, HSBC had acted pro-actively and blocked the account in question on 3 November 2020. This resulted in the recovery of £188,639.77. I'm satisfied Mr G hasn't recovered any funds from his bank or any other party. This means Mr G's outstanding loss is £96,360.23. I've carefully considered the point at which HSBC intervened in the account and I think they ought to have done so sooner.

Soon after the arrival of Mr G's funds in the account, a series of outgoing payments began. Several of these outgoing payments appear to have gone to new payees. I think HSBC ought to have intervened in the fifth outgoing payment. This instruction from their customer meant that nearly £50,000 had been requested to be sent in around three hours. I would have expected HSBC to have held this fifth payment and not allowed further payments / withdrawals due to concerns about the way in which the account was being used.

HSBC have said that they believe had they acted earlier, their customer would have responded. They say this as there still would have been significant funds available with an obvious incentive for their customer to do so. They also say that a scammer sophisticated enough to orchestrate an email interception scam on a firm of solicitors, would likely have been able to provide convincing fabricated proof of entitlement to the funds.

I've thought about what HSBC have said but I don't agree. Ultimately, we can't ever really know what would've happened, so I need to decide what I think is most likely based on the evidence available to me. The strongest evidence I have is what did happen when the account was blocked – which is that no contact was received from their customer despite HSBC reaching out to them directly. At that point there was still a sizeable sum in the account, which I think would have provided ample motivation for HSBC's customer to provide an explanation, if they were going to, to enable them to access any remaining funds. So, on balance. I can't say this would have played out differently had a larger amount been available if the account had been blocked sooner.

Further to this, when HSBC received the response from S to say that the payment was genuine (prior to this being corrected), there is no evidence that they released the blocks on the account. Rather the evidence supports that the remaining funds were moved to a holding account on 12 November 2020. So I don't think whatever concerns HSBC had at the time would have been different.

The first four payments that left the account totalled £39,936. And I don't think HSBC reasonably ought to have stopped these. So I don't think the loss of that amount was preventable by HSBC. But I do think a further £56,424.23 could have been stopped from leaving the account, beyond the £188,639.77 which was recovered and eventually returned. So I intend to direct that this is what should be paid to Mr G.

Mr G has made much of the swift messages between the banks. But all this took place after HSBC had already blocked the beneficiary account. So nothing that happened at that time would have impacted what remained to be recovered from the account.

HSBC have argued that Mr G should share some responsibility for his own loss due to contributory negligence. I've considered this, but I don't agree. As I've mentioned above, the scammer was in email contact with Mr G's daughter and was impersonating her solicitor. I don't think it can be said that Mr G was negligent when instructing the payment following his reliance on the account details his daughter shared with him. There is also no evidence that S provided a warning of the possibility of a scam which he ignored. So, I'm not currently persuaded there is a reasonable basis for making a reduction in award due to contributory negligence in the circumstances of this complaint.

Mr G has shared that S has imposed many terms on him for them providing an indemnity in relation to the £188,639.77 that has now been returned. The actions and decisions of S aren't something I can comment on. I can only look at the actions of HSBC. I accept there could have perhaps been clearer communication in this regard. But ultimately, I don't think HSBC requiring an indemnity prior to returning such a significant amount of money to an international bank was unfair, unreasonable or a departure from standard industry practice. So, I don't think they need to pay interest in relation to the returned funds. I understand that S had previously provided an indemnity for a proportion of the recovered funds. But I don't think HSBC's insistence on one indemnity was unfair or unreasonable. I understand Mr G's dissatisfaction with the terms imposed on him by S, but that isn't something HSBC are responsible for. And HSBC returned the funds within a reasonable time following receipt of an indemnity for the full amount.

In relation to the further £56,424.23 that I intend to direct HSBC to pay, I also don't think an interest award would be appropriate in these circumstances. I aim to put Mr G back in the position he would have been in, but for HSBC's failure (to intervene sooner). If HSBC had acted as I think they should have done, they would have recovered an additional £56,424.23. But the issue surrounding the indemnity would most likely have been unchanged. And whilst the amount involved would have obviously differed, I'm not persuaded the date upon which it was returned would have changed. And as I understand the returned funds were sent around and received on 11 January 2023, I think HSBC should return an equivalent amount of Euros, had the further £56,424.23 been returned on that date, using the exchange rate at the time.

I've also considered the overall service provided by HSBC, particularly in relation to their communication with S. But I'm not persuaded that the poor service that was provided impacted Mr G to the extent that a compensation award should be made.

Mr G responded with further comments which I'll address below. HSBC initially asked for an extension of the deadline to respond, but ultimately didn't provide any further comments.

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.

Mr G said he believes his payment arrived with HSBC bank but initially wasn't credited to the account in question. He points out the questions HSBC asked S on 5 November 2020 to support this. He also questions whether the fraudsters withdrew any funds prior to 9 November 2020 and shared emails from them in which they claimed the funds hadn't arrived.

I've considered this, but I'm more persuaded by the evidence HSBC have provided. Specifically, the account statements which show the payment crediting the recipient account

on 2 November 2020. They also show multiple payments leaving that account until HSBC blocked it on 3 November 2020. As I mentioned in my provisional decision, the further questions and interaction was likely due to HSBC's concerns about the payment. But none of that impacted what was available for recovery, as by that point, the account had already been blocked.

Mr G also says that the message from HSBC to S which provided details of the required indemnity was 'rather vague'. And that HSBC didn't respond to requests for clarification from S. I'm satisfied that HSBC made sufficiently clear what they required as an indemnity. Their message included where it should be sent along with the wording to be used. So, I don't agree that this wasn't made clear to S. And HSBC aren't responsible for what S did with that information.

Mr G says that once a decision is issued, the dispute is resolved. Because of that he's asked that I direct HSBC to notify S that the dispute has been closed and so the funds they hold in a blocked account can become available to them immediately. I can't become involved in or comment on the details of any arrangement between S and Mr G. So I'm not going to direct HSBC to do more than I proposed in my provisional decision and I can't make a direction to S. If he thinks it will be of assistance, Mr G can share a copy of my decision with S, to indicate that the complaint with our service has concluded.

As HSBC didn't respond and Mr G's further submissions didn't change my mind as to the outcome of this complaint, I'm not going to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part. HSBC UK Bank Plc must pay Mr G and Ms C the equivalent amount of Euros that they would have received had £56,424.23 been returned to them on the date the £188,639.77 was sent, using the exchange rate in place on that date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr G to accept or reject my decision before 4 April 2023.

Richard Annandale
Ombudsman