

The complaint

Mr and Mrs A were unhappy that HSBC hadn't refunded them after they'd been the victims of a scam, in which they sent funds to two HSBC accounts.

Mr A has since sadly passed away and so the complaint is being brought by Mrs A and Mr A's estate.

What happened

Mr and Mrs A were the victims of an investment scam. They thought they were dealing with a genuine company who were arranging various fixed rate bonds for them. They were in fact dealing with scammers.

As part of this scam Mr and Mrs A made four payments to one account (I'll refer to as account A) and a fifth payment to a different account (I'll refer to as account B) all held at HSBC. After discovering they had been the victims of a scam, they raised a complaint with HSBC.

Mr and Mrs A's bank and HSBC are both signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (the "CRM Code"). The CRM Code provides additional protection for the victims of APP scams such as this.

HSBC didn't uphold Mr and Mrs A's complaint. It said it had completed a full investigation into the allegations raised. It notified Mr and Mrs A's bank that it wouldn't be offering a refund, saying it couldn't recover any funds.

Dissatisfied with HSBC's response, Mr and Mrs A brought the complaint to our service. Our investigator looked into things but as she was upholding the linked complaint against the sending bank in full, the complaint against HSBC wasn't taken any further.

Mr and Mrs A's complaint and linked complaints were passed to me. As a result, I have re-opened and considered the complaint against HSBC and the outcome here impacts the other complaints.

I set out my findings in a provision decision which I have included in full below.

My provisional decision

I have been corresponding with HSBC and obtained further evidence about the recipient accounts and HSBC's actions following the report of the scam. Having done so I'm recommending a partial refund of the fifth payment made to account B. I'll set out my reasoning below.

Among other things, regulated firms receiving payments like HSBC, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements.

Those requirements include maintaining proportionate and risk-sensitive policies and

procedures to identify, assess and manage money laundering risk – for example 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).

And, more generally given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, I think firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice').

And I'm satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

Also relevant in this case, as mentioned earlier, is the CRM Code that HSBC are a signatory of. The relevant considerations for Receiving Firms under the CRM Code sets out the following:

"CRM Code: Payment Journey – Receiving Firm

SF2 Receiving Firms should take reasonable steps to prevent accounts from being used to launder the proceeds of APP scams. This should include procedures to prevent, detect and respond to the receipt of funds from APP scams. Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

Prevention

SF2(1) Firms must take reasonable steps to prevent accounts being opened for criminal purposes.

Detection

SF2(3) Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds.

Response

SF2(4) Following notification of concerns about an account or funds at a receiving Firm, the receiving Firm should respond in accordance with the procedures set out in the Best Practice Standards."

In considering all of the above, and to determine if HSBC met the standards required of it under the CRM Code, I have looked at whether HSBC opened the receiving account correctly, whether there was anything in the way the account was being used that should have given HSBC any cause for concern and finally; once notified of fraud did it act appropriately and in a timely manner. And if I consider there were failings in relation to any of the above, I have to consider whether HSBC's acts or omissions fairly resulted in Mr and Mrs A's losses.

While HSBC has provided our service with information about the receiving bank accounts – it has done so in confidence. This is to allow us to discharge our investigatory functions and HSBC has provided that which is necessary for the determination of this complaint. Due to data protection laws our service can't share any information about the beneficiaries, the receiving bank accounts or any investigation and action HSBC subsequently took. However, I have thoroughly reviewed and considered all the information provided before reaching my provisional decision.

Account A

To help decide whether or not a bank failed to prevent the loss of an APP victim when opening the beneficiary account, we would generally ask to see evidence that; it correctly

followed its account opening procedures; carried out checks to verify the identity of the named account holder; and did its due diligence when opening the account.

I'm satisfied that HSBC carried out checks to verify the identity of the named account holder and did its due diligence when opening the beneficiary account. There wasn't anything at the time that I think reasonably could've alerted HSBC that the account it was opening would later be used fraudulently. So, I'm satisfied HSBC has taken reasonable steps to prevent the accounts being opened for criminal purposes and it didn't miss an opportunity to prevent Mr and Mrs A's losses when opening the account.

The primary duty of a bank is to follow their customer's instructions and make payments as directed in line with the mandate – which is usually set out in the terms and conditions of the account. The CRM Code sets out that Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. This ties in with long standing regulatory and legal obligations Banks and Building Societies have to monitor their business relationships and to be alert to other risks - such as fraud, which would include giving consideration to unusual and out of character transactions.

I've looked at the account history of the beneficiary account and I can't say there was any account activity that I think would reasonably have stood out to HSBC as suspicious or significantly outside of what might be expected for accounts of that type. I'm also satisfied there was no notification of fraud on the account prior to the payments Mr and Mrs A made into the account and no other red flags where it could reasonably be argued that HSBC might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions.

So, from what I've seen, I'm satisfied HSBC has demonstrated that it has taken reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. I also don't think HSBC ought reasonably to have had concerns where I would have expected it to have intervened, so I can't fairly say that it could have prevented Mr P's loss in this way either.

The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of APP fraud and notify the Sending Firm if any funds remain for recovery. Here, once notified of the scam, I'm satisfied HSBC took the necessary actions required of it and did so in a timely manner. Unfortunately, no funds remained in the beneficiary account as they had already been moved on / withdrawn from the account. So, taking the above into consideration I'm satisfied, following notification of APP fraud, HSBC responded in accordance with the procedures set out in the Best Practice Standards.

And I don't think I can fairly say HSBC didn't do enough to respond to the alleged APP fraud, I'm satisfied that HSBC met the standards required of it under the CRM Code. I also don't think HSBC could've done anything more as the Receiving Firm to have prevented the loss of Mr and Mrs A's money regarding account A. And it responded appropriately once notified of the fraud. So, it follows that I don't think they are liable to reimburse Mr P for his loss under the CRM Code or otherwise

Account B

The payment to account B originated from Mr A's sole account.

Having considered similar evidence for account B, I don't think HSBC did meet its obligations under the CRM code. This is based on the account activity. Mr and Mrs A's payment as well as other prior to it followed a known fraudulent pattern – large credits received then quickly being dispersed. And that the activity was not consistent with the accounts expected or previous use, based on what HSBC knew about its customer – from both its account opening information, and account activity.

I'm currently persuaded that the activity on the account was such that HSBC ought to have intervened, prior to Mr A's payment being made to this account.

From the notes, it appears HSBC tried to contact its customer (after it had received notification of fraud) – and I can't see that they responded. So, I think it's most likely

that HSBC would have received a similar response if it had tried to contact its customer at an earlier point. And shortly after Mr A's payments HSBC went on to receive reports of fraud from the remitting banks.

Putting things right

Based on the above, I'm currently recommending that HSBC refund Mr A's estate partially for the £22,500 payment made to account B. This payment is linked to other complaints being brought by the estate of Mr A and so I am recommending a 33% refund of this transaction £7,425, plus interest. This represents a shared responsibility between Mr A's estate, the sending bank and HSBC.

I think interest should be calculated using the monthly average rate for one-year fixed- rate bonds as published by the Bank of England for the month of April 2021 from the dates of the disputed payments until 09 April 2022 (the date the bond would have matured and, had the money been genuinely invested, the likely date it would have been available again to Mr and Mrs A). And on the same basis but using the rate for the month of April 2021 from 09 November 2021 until the date of settlement.

I think this is the fairest way of, as far as possible, putting Mr A's estate in the position it would have been had the fraud not taken place – that being that he would have likely purchased a legitimate one-year fixed rate bond elsewhere and continued to invest the money without risking the capital.

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.

Both parties accepted my provisional decision. HSBC queried a typo in the provisional decision with regard to the interest calculation which should have read

I think interest should be calculated using the monthly average rate for one-year fixed- rate bonds as published by the Bank of England for the month of April 2021 from the dates of the disputed payments until 09 April 2022 (the date the bond would have matured and, had the money been genuinely invested, the likely date it would have been available again to Mr and Mrs A). And on the same basis but using the rate for the month of April 2021 from 09 **April** 2021 until the date of settlement.

In a linked complaint Mr A asked for a higher rate of interest to be considered – in that case various rates needed to be considered as there were multiple payments and they thought they were purchasing various different products all attracting different rates of interest. In this case the interest calculation is simple and straightforward as it relates to one payment with which Mr and Mrs A thought they were specifically purchasing a one-year fixed rate bond. Therefore, the application of the rates published by the Bank of England for the Month of April 2021 is the correct one. And HSBC has calculated accordingly.

I am not minded to change my decision from that set out above and in my provisional decision – apart from the amendment to the interest - due to my error.

Putting things right

I now direct HSBC to refund Mr A's estate partially for the £22,500 payment made to account B. This payment is linked to other complaints being brought by the estate of Mr A and so I am recommending a 33% refund of this transaction £7,425, plus interest. This represents a shared responsibility between Mr A's estate, the sending bank and HSBC.

I think interest should be calculated using the monthly average rate for one-year fixed-rate bonds as published by the Bank of England for the month of April 2021 from the dates of the disputed payments until 09 April 2022 (the date the bond would have matured and, had the money been genuinely invested, the likely date it would have been available again to Mr and Mrs A). And on the same basis but using the rate for the month of April 2021 from 09 April 2021 until the date of settlement.

My final decision

I partly uphold Mrs A and the estate of Mr A's complaint against HSBC UK Bank Plc

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and the estate of Mr A to accept or reject my decision before 2 June 2023.

Sophia Smith
Ombudsman