

The complaint

The representative of the estate of Mr M complains that Mr M was the victim of a number of scams and that HSBC UK Bank Plc ("HSBC") didn't do enough to prevent the scams or recover his money.

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.

The estate of Mr M complains that Mr M was the victim of multiple scams made via card payments and transfers between 2010 and 2021 for the amount of over £800,000.

The estate of Mr M realised that Mr M had been scammed in 2021. Mr M sadly died in April 2021.

The representative of Mr M's estate raised a complaint with HSBC and requested a refund of all of the transactions. HSBC refunded all of the transactions that took place after 28 May 2019 as this is when the Contingent Reimbursement Model started. It declined to refund the transactions that took place between 22 September 2017 and 28 May 2019. It objected to this service looking at the transactions that occurred prior to 22 September 2017, as it believed that the complaint about those transactions was brought to us too late.

Once the complaint was with this service one of our investigators looked into this matter. They agreed that we could not look at the transactions that occurred prior to 22 September 2017. They also did not think that HSBC should refund the transactions that occurred between 22 September 2017 to 28 May 2019, on the basis that the payments were not sufficiently out of character to have prompted HSBC to have intervened, and even if HSBC had intervened, they concluded that it would be difficult to say that the intervention would have stopped the scam in question or other scams from happening. They did not comment on the transactions that HSBC refunded.

The representative of Mr M's estate did not agree with the investigator's findings in relation to the transactions between 22 September 2017 to 28 May 2019. They initially objected to the investigator's findings about the transactions that occurred prior to 22 September 2017, but after a follow up assessment the representative they then did not object further. Therefore, this complaint was referred to me to issue a final decision on the transactions that occurred after 22 September 2017. I will also address the delays that occurred when this matter was raised. I will not address the transactions after 28 May 2019 as they have been refunded, in line with our approach.

From this point I will refer to the late Mr M as Mr M for the sake of readability.

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 M authorised the payments he made, even though he was duped into making them. The starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And under the Payment Service Regulations 2017, Mr M 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 that HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to countervarious risks, such as money laundering and 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.

In this instance, the payments in question were not out of character from Mr M's normal account usage. I also can't see any credible warnings from the time about companies that Mr M paid. So I don't think that HSBC needed to intervene when these payments were made.

Also for the sake of completeness, even if HSBC had intervened (although I don't think it needed to), I don't think that there is enough for me to say that it is more likely than not that an intervention would have changed anything. I say this because, there were payments which HSBC queried and from the notes that we have it seems as if Mr M confirmed that the payments were genuine and that he wanted to proceed. So it is difficult for me to say that, on balance, had HSBC intervened further, Mr M would have stopped doing what he was doing.

Additionally, had HSBC provided more general warnings about scams, I don't think that would have changed Mr M's actions. I say this because Mr M was scammed on numerous occasions over a long period of time by a number of scams that shared similar features to each other - which were for the most part sending money overseas to either obtain a return or to help third parties. So I don't think that Mr M needed to have been made aware of the possibilities of being scammed and the dangers of sending funds to third parties as he had done so and lost money in the past, yet despite this, he continued to be scammed further by similar means.

I've also thought about whether HSBC could have done more to recover the funds after Mr M reported the fraud. However, in these circumstances, I don't think that HSBC could have recovered the funds given the timescales involved.

HSBC are also under no obligation to refund the money to Mr M under the Contingent Reimbursement Model (CRM) Code either, as this had not come into effect for those particular payments.

So overall I think that HSBC did not need to have intervened, and even if it had done so, I don't think that the intervention would have made a difference in this instance. I'm strongly of the view that Mr M would've continued with the transactions, even if HSBC had warned him about the risks of fraud. I also do not believe that HSBC could have recovered the funds by other means. So I don't think this complaint should be upheld. I therefore don't think that HSBC should reimburse Mr M for any of the transactions that he has complained about that happened after 22 September 2017 and before 28 May 2019.

Finally, I will address HSBC's investigation of this matter. Mr M's representative has asked for compensation for the delays due to the distress that it caused. Everyone agrees that HSBC made some mistakes here and HSBC has paid £200 compensation for this due to the delays. It accepts that its service fell short here and I think that's clearly the case. In this instance though the delays were not excessive given the complexity of this matter so I think that the £200 already paid is sufficient.

I should also add that if I did not think this, in order for me to say that HSBC should do something more here, I would have to be satisfied that its failings had a financial impact on the estate itself.

But an estate can't 'feel' distress or be upset and so I can't compensate it for any emotional impact. And then when looking at any inconvenience caused here, such as delays, that is an impact on the beneficiaries, rather than the estate. The impact to the estate itself would not be earning any interest from the time the claim was first raised. But had the issue been resolved more quickly the beneficiaries would have received interest not the estate so I can't say the delays cost the estate itself any money.

That means that even if I thought that HSBC should pay additional compensation for the delays, I couldn't ask it to pay additional compensation in the specific circumstances of this complaint.

My final decision

My final decision is that do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 2 April 2024.

Charlie Newton
Ombudsman