

The complaint

Mrs I is unhappy that HSBC UK Bank Plc has refused to refund the money she lost after falling victim to a scam.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- In late-October 2021 Mrs I's mother (Mrs M) received a call from what appeared to be an employee from her building society account provider, but who actually turned out to be a scammer. Mrs M's health and medical conditions meant she was unable to understand what she was being told, so she passed the call to Mrs I (who is her main carer). The scammer persuaded Mrs I that someone had been applying for loans, the proceeds of which had been paid into Mrs M's account and then passed on to Mrs I's account. And the money needed to be returned so that Mrs M and Mrs I wouldn't be held liable for the debts. Mrs I complied with the scammer's instruction to send money from her two current accounts and credit card account to accounts that were, presumably, under the scammer's control. Mrs I received a total of £21,400 from her mother's account and sent a total of £50,400 (via eight faster payments and one debit card payment) from her current account and £2,500 from her credit card account.
- Mrs I contacted HSBC after speaking with her daughter, who'd helped her realise she'd been scammed. HSBC refused to refund any of the money because it said it had given Mrs I effective warnings, which she ignored, and she hadn't done enough to verify the caller was a genuine building society employee. It was able to recover a total of £3,992.83 from the receiving banks which, I understand, has since been returned to Mrs I's accounts. HSBC also sent £21,400 back to Mrs M's account provider after it raised an indemnity. Mrs I didn't accept the bank's findings so asked us to look into the matter.
- Our investigator thought the complaint should be upheld in part as he thought HSBC ought to have done more to protect Mrs I, but she should have done more to verify the caller was genuine. He also thought it was wrong of HSBC to send £21,400 of Mrs I's own money back to her mother's account provider. Overall, he recommended that HSBC should refund 50% of the losses, minus the money that'd already been recovered, plus interest. Mrs I didn't accept, so the complaint has come to me.

I issued a provisional decision earlier this year and have reproduced my provisional findings below:

Payments made from Mrs I's two current accounts

I must first make clear how much money is at stake in this case because I think one payment has, so far, been missed. Mrs I made eight faster payments to the scammer from her two current accounts, totalling £49,900. But it's my understanding that she also made one debit card payment of £500 which was still pending at the time Mrs I first contacted the bank. The

HSBC adviser she spoke to during the call that took place on 28 October 2021 at 18.14 confirmed as much, yet seemingly did nothing to stop the payment. And her bank statement shows this amount was debited to her account the following day.

There's no dispute that Mrs I made and authorised all nine payments that ended up with the scammer. So the starting point under the Payment Services Regulations 2017 and the account terms and conditions is that Mrs I is responsible for the payments along with any resulting losses.

But the matter doesn't end there. I've also considered whether Mrs I should have received a refund of the money she lost under the provisions of the voluntary Contingent Reimbursement Model Code ("the Code"). HSBC has signed up to the Code, which is designed to reimburse victims of authorised push payment (APP) scams. But the Code places a level of care on Mrs I too.

Under the CRM Code, and relevant to this particular complaint, a bank may choose not to reimburse a customer if it can establish that:

- The customer ignored what the Code refers to as an "effective warning" in relation to the payment being made.*
- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*

The Code defines the requirements for a scam warning to be considered "effective" and, like the investigator, I'm not currently satisfied those requirements were met. HSBC hasn't engaged with this part of the investigator's view so I won't go into great detail on this point. What I would say is that HSBC hasn't told us what warnings Mrs I was given. Instead the bank has pointed to its "safe account" scam warnings, which weren't presented to Mrs I. And, in any event, these don't mention the situation she found herself in – being told that loans were being taken out and needed to be repaid promptly. In the circumstances, Mrs I can't be said to have ignored an effective warning.

But I do currently think HSBC has done enough to establish that Mrs I didn't have a reasonable basis for believing the person she was sending money to was legitimate. I'll explain why.

I've taken into account everything Mrs I has told us and I've also listened to recordings of some of the calls she had with HSBC, including the ones when she first reported the scam.

Having done so I note that the scammer spoofed Mrs M's account provider's fraud department's phone number and Mrs I had called that number back – which verified it was Nationwide's own number. But she ended that call because the scammer called her back while she was on hold, waiting to connect to someone from the genuine building society. Also, Mrs I says the scammer sounded authoritative and helpful, but was also stressing the importance of prompt action and rushing her to move her money to repay the loans. I accept this might have affected Mrs I's ability to think as clearly in the moment as she would have in other, less stressful situations. But I also think some of the things the scammer was doing and saying ought to have raised some alarm bells for Mrs I and caused her to think twice and/or undertake some additional checks before complying with the scammer's instruction. I say this having taken the following into account:

- Mrs I says she took over the call from her mother because Mrs M couldn't hear what the caller was saying and was getting confused – Mrs M's medical condition means she can often have difficulty understanding what she's being told. Mrs I also says she's aware of*

some scams – though not this particular one – and had frequently told her mother not to reply to text messages she'd received which Mrs I identified as phishing attempts from scammers. But, despite this, Mrs I seems to have readily accepted that the scammer was a genuine building society employee, without asking any questions or seeking to verify the caller.

- I have difficulty understanding why Mrs I accepted the scammer's suggestion that the loans must be repaid with such urgency. If the loans had been taken out fraudulently, but she had the money from them in her bank account then this could be returned in due course following direct contact with the loan provider. I think Mrs I ought to have paused and thought more about what she was being asked to do.
- When HSBC's employee asked Mrs I questions during the call when she first shared details of what happened during the scam, at times she couldn't remember exactly what had happened. She said she'd asked the scammer a lot of questions. But also suggested the events had got confusing as she'd been on the call to the scammer for four hours. With that in mind, some of what Mrs M reported during that call seems contradictory. On the one hand she said the scammer told her someone was applying for loans in her mother's name. But then she said the loans were being applied for in lots of different people's names and she was returning the money to those people. And in response to the investigator's view, Mrs M said the scammer told her they were in contact with the loan providers and the named individuals that she was being told to send the money on to worked for those providers. It's somewhat difficult to accept everything Mrs M tells us now when she couldn't even be sure what happened straight after the call had finished.
- In response to our investigator's view, Mrs I said she didn't realise the money was coming from her mother's account. But when she first reported the scam to HSBC she said something different. She said she asked the scammer why the money was being paid to her and he said this was because she was an existing payee on her mother's account. I appreciate a person's memories of events can fade over time and note these events took place almost 18 months ago. In the circumstances, I'm inclined to place more weight on Mrs I's recollections from the time she reported the scam.
- The individual payment amounts coming into Mrs I's account didn't match the amounts the scammer was telling Mrs I to send back out. Mrs I said she saw automated messages alerted her to the fact money was coming in. I think she ought to have paid closer attention to this, queried the discrepancy I've highlighted and realised something wasn't adding up.
- Mrs I called her daughter at one point seemingly because she had some concerns about what was going on. The scammer overheard the conversation and was apparently angry and told her not to speak with anyone until she'd given a statement to the police. I can see why mention of the police might have alarmed Mrs I, but I'm also not sure the explanation the scammer gave rings true. I note Mrs I continued to follow the scammer's instructions but eventually did call her daughter again who told her she was being scammed. I suspect Mrs I had some suspicions throughout the call and ought to have done more to check and verify what the scammer was telling her.

The one debit card payment isn't covered by the Code. But I've also considered whether HSBC did enough, more generally, to protect Mrs I. Initially, four payments came in from Mrs M's account, it seems, in fairly rapid succession and Mrs I then sent £8,500 out to a new payee. This type of activity was unusual given the way Mrs I had previously operated her account and I think, is suggestive of a scam. In the circumstances, I think HSBC should have

done more to intervene other than just presenting in app warnings. Had it done so I think the bank could easily have identified that Mrs I was being scammed and prevented the money being lost.

I think both parties ought to have done more here, so I currently consider a fair outcome in this case is for HSBC to reimburse 50% of the money Mrs I lost.

When I refer to Mrs I's losses I have to take account of the fact that £21,400 of the money she originally sent away wasn't hers, it was her mother's. So, strictly-speaking these are not losses which she can claim. However, as the investigator identified, HSBC wrongly sent that same amount of money back to Mrs M's account provider. I don't think it's fair to conclude that HSBC should be wholly liable for that sum because, at the end of the day I've already concluded that Mrs I should be held 50% liable for any losses. I'll provide further clarity about the amount Mrs I should receive back in the Putting things right section below.

HSBC tried to recover most of the money after Mrs I notified it about the scam. But it didn't do so until 3 November, six days after Mrs I reported the scam. It's not clear why the bank delayed recovery action given that the APP Best Practice Standards say HSBC should have made "immediate" contact with the receiving banks. And the receiving banks ought to respond immediately.

HSBC was able to recover £3,992.83 from the banks that received the nine faster payments. But HSBC might have been able to recover more money had it complied with the requirement to contact the receiving banks immediately. HSBC should now contact the receiving banks to find out whether any additional money could have been recovered had it contacted them within one hour of Mrs I reporting the scam. For clarity her first call to the bank seems to have taken place at 18.14. If this evidence shows additional money could have been recovered, but for HSBC's delays, then I will likely instruct HSBC to make an additional award to that which I've sent out below.

Although the £500 debit card payment was still pending when Mrs I reported the scam, I'm not convinced HSBC would've been able to stop it at that point, but I'd welcome the bank's specific comments on this point in response to this decision. HSBC doesn't seem to have made any efforts, so far as I can see, to recover the debit card payment. It could have attempted recovery using the chargeback process. But I note similar attempts were made to recover the credit card losses and were unsuccessful. I currently think it's likely the same would have been true if a chargeback had been attempted with regards to the debit card payment.

Payments made from Mrs I's credit card

Again, there's no dispute Mrs I made five payments, totalling £2,500, from her credit card account to an account which was under the scammer's control

The Code I've talked about above, doesn't apply to credit card payments. But I still think HSBC should be held liable for 50% of these losses. I say that because the credit card payments seem to have been made at the end of Mrs I's interactions with the scammer, after she already made the nine payments from her current account. I've already explained that I think HSBC ought to have intervened while Mrs I was making the transfers from her current account. If HSBC had done so it follows that these credit card payments could also have been prevented.

I also note that HSBC now accepts that a mistake was made with regards to the credit card account. After Mrs I reported the scam, HSBC says it meant to temporarily refund the five disputed payments while it attempted to reclaim the money from the receiver via

chargebacks – this is a standard part of that process. But, instead, HSBC debited the five payments from Mrs I's account again. This increased the credit card balance from approximately £2,500 to £5,000 and interest was charged on that entire debt until HSBC reversed the five erroneous payments on 24 March 2022. I can see that HSBC made three interest adjustments (totalling £89.34) on the same day it reversed those five payments, but I don't think those adjustments were calculated correctly. The only money Mrs I owed on this account was related to this scam. And the total interest charged over the period was £277.77. Given that the erroneous payments made up half the account balance, the interest refund should have been half of the interest charged – in the region of £138.89.

I mention the above to highlight HSBC's mistakes as I think it will have added to the adverse impact this scam had on Mrs I. I will talk more about compensation relating to that impact below. But, in any event, I think further adjustments need to be made relating to the interest Mrs I has been charged on her credit card account since she fell victim to this scam.

While I think Mrs I should bear 50% of the responsibility for the £2,500 she lost via her credit card, I don't currently think it's fair that HSBC should benefit financially from Mrs I having fallen victim to this scam. I think HSBC should have done more to prevent the scam and, if had done so I don't think Mrs I would have made any payments from her credit card. Mrs I must repay 50%, or £1,250, of the money she lost to this scam via her credit card. But I don't think Mrs I should have to pay any interest relating to the £2,500 she paid away to the scammer, or the additional £2,500 that HSBC wrongly debited from her account.

Mrs I's distress and inconvenience

Mrs I undoubtedly suffered some distress and/or inconvenience as a result of this scam. I can't attribute all of that to HSBC, although it can be held partially responsible given that I think it ought to have intervened and prevented the scam at the point when she made the first transfer out of her current account.

I also see Mrs I was required to speak to a number of different departments given that she'd lost money from both her current and credit card accounts. I appreciate that different products are administered by different departments within the bank. But I have concerns about the need for Mrs I to explain what had happened more than once, and liaise with different departments, relating to one scam. This is likely, I think, to have caused her additional, unnecessary distress and inconvenience.

The bank also then made mistakes with the credit card and wrongly returned the £21,400 (which was, it seems also delayed for no apparent reason), which I've already discussed.

In the circumstances, I currently think HSBC should pay £250 compensation to Mrs I to recognise the impact its actions had on her.

It took some time, and intervention on this service's part, following my provisional decision to obtain the necessary information from the receiving banks about whether prompter action by HSBC would have resulted in a higher recovery amount. I have corresponded with both parties since that information was received and explained that:

- I'm disappointed with the efforts HSBC made to obtain the necessary evidence from the receiving banks. We had to chase HSBC and ended up contacting the receiving bank ourselves. HSBC ought to have gathered this evidence as part of its investigation, before the complaint even came to this service. Accordingly, I was minded to increase the compensation award from £250 to £350 to recognise the four-month delay (and resulting inconvenience to Mrs I) that has occurred since I issued my provisional decision.

- The evidence from the receiving banks indicated that an additional £3,359.90 would likely have been recovered from three of the receiving accounts if HSBC had acted in a more timely manner. So I was minded to instruct HSBC to pay this sum to Mrs I, along with interest calculated at 8% per year simple from the date the money should have been returned to her to the date of settlement. I noted that HSBC wrote to Mrs I on 8 December 2021 to confirm that £3,825.88 had been recovered from one of the receiving banks and would be paid into her account within 24 hours. I thought it fair to conclude that the additional £3,359.90 – which should have been recovered from the same receiving bank – would also likely have been returned to Mrs I on that same date. So interest on the difference should be calculated from 8 December 2021.

In response to my provisional decision and further correspondence about increasing my award, Mrs I said (in summary) that:

- She shouldn't be held liable, in any way, for the £21,400 that HSBC wrongly returned to her mother's account. This money was her own and was taken without her consent, so should be returned in full.
- She has lost all faith in HSBC and has no way of knowing whether the bank will calculate the 8% interest award correctly. She would like us to provide a minimum monetary amount that she can expect to be paid.

The only objection HSBC raised in response to my provisional decision was that it couldn't control the flow of information, and speed of response (or lack thereof), from the receiving banks.

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.

Having done so, I remain satisfied that the award I've most recently communicated to the parties is fair and reasonable in all the circumstances.

I've thought carefully about Mrs I's comments about the £21,400 that was returned to her mother's account. But given all the events that led to this complaint, I remain satisfied that I can only fairly hold HSBC responsible for 50% of that money.

I appreciate Mrs I's concern about the interest calculations, but my role is to set out what I believe to be a fair principle of redress. And I have no reason to doubt that HSBC will accurately calculate the monetary amount in line with my direction. As I understand it, this is a fairly automated process and I'm not aware of any systemic problems that HSBC is currently having when completing such calculations. If Mrs I wishes to estimate what she'll receive then she should be able to find a tool on the internet which can help with this. HSBC should also provide Mrs I with a breakdown, showing how it's calculated the total compensation amount. And it should answer any reasonable questions she may have about this.

I note HSBC's comments about the delays obtaining the necessary information from the receiving banks, including that one of the banks refused to respond to its request. But the Code sets out that the sending bank should act as the case-handler when a complaint has been raised. I think this extends to gathering information from the receiving banks about whether earlier recovery would have made a difference and pressing the receiving banks – with reference to relevant legislation, rules and codes – where necessary. HSBC failed both to notify the receiving banks about the scam in a timely manner and gather the necessary information retrospectively, which includes dealing with any objections from the Code-

covered receiving banks. This should all have been completed before the complaint came to this service and should not have required our intervention. The resolution of Mrs I's complaint has been delayed as a direct result and I'm satisfied an award of £350 compensation is fair and reasonable in all the circumstances.

Putting things right

With all of the above in mind I instruct HSBC to:

1. Refund £25,200 of the money Mrs I paid away to the scammer via her current accounts, plus:
2. Pay interest on the £25,200 refund calculated at 8% simple per year from the date the transactions left Mrs I's accounts to the date of settlement. I have awarded this because, historically, neither of Mrs I's account carried a significant balance. But on 13 September 2021, a little over a month before the scam happened, Mrs I received a credit of just over £105,500 into her main current account. Mrs I says this was a lump sum from her pension which she'd intended to use to repay her mortgage. I can't see any obvious payments leaving her account pertaining to a mortgage, but I can well accept that she may have planned to use the money she lost to this scam for this and/or other means rather than leaving it in her current account – where no interest was payable – had the scam not occurred. I can't be sufficiently sure what she would have done with the money, so I think it's fair to award interest calculated at 8% simple per year. Having said that, any of the money that's been recovered from the receiving banks can be taken into account when calculating the interest, from the date that money was returned to Mrs I's account.
3. Refund 50% of the money Mrs I paid away to the scammer from her credit card account (£1,250). This can be paid to the credit card account if a debt still exists and then:
4. Rework Mrs I's credit card account from 28 October 2021 to the present date, refunding any charges or interest that have been applied and taking into account the repayments she has actually made. If the resulting rework means that Mrs I's account would've ended up in credit at some point then HSBC should pay her interest both on that credit balance and any further repayments she made, calculated at 8% simple per year from the date the account would have gone into accredit to the date of settlement.
5. Pay £350 compensation to Mrs I.
6. Pay an additional £3,359.90 to Mrs I, representing the money HSBC could have recovered from the receiving bank accounts if it had acted promptly after Mrs I reported the scam. Interest should be added, calculated at 8% per year simple from the date the money should have been returned to her (on 8 December 2021) to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs I how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I don't currently think it's fair to deduct the money HSBC managed to reclaim (from the receiving banks) from the refunds the bank needs to pay due to its failure to prevent the fraud – those reclaimed funds are Mrs I's money and have already been returned to her.

My final decision

My final decision is that I uphold this complaint and I instruct HSBC UK Bank Plc to settle the matter as set out above. HSBC UK Bank Plc must do so within 28 days of the date on which we tell it that Mrs I accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 21 September 2023.

Ruth Hersey
Ombudsman