

## **The complaint**

Mr G complains that State Bank of India (UK) Limited ("SBI") hasn't protected him from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr G has explained that in February 2023 he made two payments from his SBI account which he lost to fraud as a result of an email interception scam. Each payment was for £25,000, and together they totalled £50,000.

Mr G subsequently realised he'd been scammed and got in touch with SBI. Ultimately, SBI didn't reimburse Mr G's lost funds, and Mr G referred his complaint about SBI to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

## **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've reached materially the same conclusions as our Investigator. That is, I've decided to uphold this complaint in part. I'll explain why.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I accept these were authorised transactions even though Mr G was tricked. So although Mr G didn't intend the payments to ultimately go to scammers, Mr G is presumed liable for the loss in the first instance. However, taking into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider SBI should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, 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 its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and other payment service providers are generally more familiar with than the average customers; and

- 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.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Bearing this in mind, I need to decide whether SBI acted fairly and reasonably in its dealings with Mr G when it processed the relevant payments.

The prior activity of Mr G's SBI account is an important aspect when considering whether these payments were sufficiently unusual or suspicious for the account such that SBI should have paused the payments, pending further enquiries, before allowing them through. In this regard, SBI has sent us relevant account history dating back to 2013. From this information, I can see that the largest payment Mr G made from his account prior to February 2023 was for £20,000.

However, between 9 and 13 February 2023, Mr G then made five payments of £25,000 each (totalling £125,000) legitimately to his solicitors. There's no doubt in my mind, given the details of these payments, and their amounts and frequency, that this was unusual activity for Mr G's account. Bearing in mind what I've said above, good industry practice was that SBI ought reasonably to have been on the lookout for payments that were uncharacteristic or otherwise suspicious to the extent that they might have indicated a fraud risk. And there's no doubt in my mind that SBI therefore ought reasonably to have intervened at some point between 9 and 13 February 2023 when these payments totalling £125,000 were instructed, to speak to Mr G to check everything was in order. And it seems to me, had it done so, Mr M most likely would have explained what he's since told us: that he was sending funds to his solicitor for a property purchase; and he was sending them in amounts of £25,000 because there was a limit on how much he could send each day.

SBI has said that if it had intervened at this stage (between 9 and 13 February 2023), this wouldn't have prevented the scam. However, for reasons explained below, I think SBI should nonetheless, in any event, have intervened in the scam payment on 15 February 2023 (and that this would have prevented the scam), so my decision does not turn on this. But as banking professionals, I think SBI really ought to have realised if it had spoken to Mr G between 9 and 13 February 2023 that if there was a fraud or a scam risk here, it might most likely come from Mr G paying the wrong account, including through an email interception scam. So, I don't think it's unreasonable to say that if SBI had done what it reasonably should have between 9 and 13 February 2023, SBI could have flagged this risk to Mr G *before* he made the scam payments on 15 and 16 February 2023.

SBI has said that it's unreasonable to say the two scam payments on 15 and 16 February 2023 ought then to have concerned it, bearing in mind the previous payments. But I don't agree. These two scam payments were still for large amounts, with a material risk of being related to fraud, bearing in mind they were being instructed to a new recipient account (different to the five legitimate payments made between 9 and 13 February 2023), indicating Mr G might be about to fall victim to the very type of scam SBI ought reasonably to have been alert to, if SBI had spoken to Mr G about his previous payments. But even if SBI hadn't already intervened before this payment instruction (and, in actual fact, it hadn't), it really ought to have been concerned about Mr G's pattern of payments, their size and frequency, and the new recipient account, and realised there were clearly sufficient grounds under which it ought reasonably speak to Mr G before allowing the payment, to protect him from the possibility of financial harm. So, I don't think it's unreasonable to say that in any event SBI ought to have been concerned at this stage – when Mr G instructed the first scam

payment on 15 February 2023 – such that it ought to have intervened and spoken to Mr G before allowing the payment through, to check everything was in order.

During the ensuing appropriate discussion I think SBI ought reasonably to have had with Mr G before it allowed this payment through, I would reasonably expect SBI to have asked Mr G who the payment was for, what the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I have no doubt, had it done so appropriately, that Mr G would again have told it what he's since told us: that he'd received an email apparently from his solicitors asking him to make the payments to a different bank account, that he'd replied asking them to send the request on headed paper (which they then did); that he'd emailed his financial adviser about this and he'd said it was fine. But I don't think this ought to have satisfied SBI given what it ought to have known about scams like this. And notwithstanding what I've said below about Mr G's contributory negligence, and the fact I understand he was feeling pressure to make all the payments by a certain time, I do think, if SBI had warned him this was indicative of an email interception scam, that he would have taken those warnings from SBI seriously and ultimately he wouldn't have made the payments without first checking things out with his solicitors, in which case the scam would have been uncovered and Mr G's loss avoided.

Given I think SBI, for the reasons explained above, reasonably ought to have prevented the scam payments, there's no need for me to address whether I think it acted reasonably in attempting to recover the funds for Mr G when he reported he'd been scammed.

### **Putting things right**

I've explained why I'm satisfied that had SBI done what it should have, the loss of Mr G's two payments totalling £50,000 would most likely have been prevented.

I've thought about whether Mr G should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). In this case, I think it's fair to say Mr G wasn't as careful with his money as he reasonably ought to have been. He had previously been sent information from his solicitors saying it wouldn't change the account he should pay and that if he received an email from them containing payment instructions or requests to call them immediately to verify the information prior to sending his funds. I understand Mr G has said that he did try to call the solicitors but was unable to get through. And that he emailed his financial adviser who said it was fine and as he needed to get the money across he therefore made the payments. But the fact remains, Mr G should have been more careful. I think intervention from SBI would have made a difference. But that Mr G already had enough information available to say he reasonably ought to share equal responsibility for the loss of the payments, such that fair compensation would therefore be for SBI to pay Mr G £25,000 (to return to him 50% of the total of the payments he lost to the scam). To compensate Mr G for having being deprived of these funds, SBI should also pay Mr G interest on this amount calculated at 8% simple per year from the date of each payment to the date of settlement.

### **My final decision**

For the reasons explained, I uphold this complaint in part and I direct State Bank of India (UK) Limited to pay Mr G:

- £25,000; plus
- interest on this amount calculated at 8% simple per year from the date of each payment to the date of settlement (if SBI deducts tax from this interest, it should send Mr G the appropriate tax deduction certificate).

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

Neil Bridge  
**Ombudsman**