

## **The complaint**

Mr S complains that HSBC UK Bank Plc won't reimburse him after he fell victim to a scam.

### **What happened**

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that in around February 2020, Mr S met an individual offering massage treatment. Mr S received treatment on several occasions and during these treatments, built a rapport with the individual. As this was the time when the Covid pandemic was beginning, the individual told Mr S that she needed to leave for Germany, as her brother was ill and she needed to see him before countries went into lockdown. However, as lockdown restrictions then tightened, the individual was unable to travel to Germany, so asked Mr S if he would help pay for her to go home to Romania to stay with her aunt, which Mr S agreed to do.

Between then and October 2022, Mr S remained in contact with the individual by text. During this time, the individual made Mr S aware of many 'emergency' situations that were occurring, and Mr S helped her financially, on the understanding that she would pay him back on her return to the UK. These requests initiated around supporting the individual with expenses surrounding her brother's health, later the individual told Mr S she herself had suffered an injury and needed money for bills and medical expenses. The individual then said she had further, worsening health complications and eventually asked for payments to be made towards multiple tax payments and lawyer bills that she said were needed to sell her house and repay Mr S.

In total, Mr S sent the individual £98,775.36 from his HSBC account over 120 payments – all but £510 of this being international payments. He also sent further funds from other bank accounts in his name. The scam unfolded when Mr S asked his son to repay some money owed sooner than initially agreed and, when questioned further by his son, he uncovered that images provided by the fraudster, purportedly of her own injuries were in fact available on search engines. At this point Mr S contacted HSBC to raise a fraud claim.

HSBC investigated Mr S' claim. It refunded him the £510 he sent within the UK, but didn't consider it was liable to refund the remaining payments. It didn't consider the payments were out of character, based on what it knew about Mr S' spending patterns and considered that even if it had intervened, it wouldn't have been able to break the 'spell' Mr S was under. It did however award Mr S with £250 for aspects of its service and bank errors during the complaint.

Mr S disagreed and so brought the complaint to our service. An investigator considered Mr S' complaint and upheld it in part. She considered that by 6 April 2020, Mr S' spending on his account was sufficiently out of character that HSBC ought to have intervened and had it done so, HSBC would've been able to identify that Mr S was falling victim to a scam and stop further payments being made. She also considered that by this time, there was sufficient cause for Mr S to also be concerned that the individual he was sending money to may not be legitimate, and so recommended that both parties share a 50% liability of payments made from 6 April 2020, with HSBC also refunding international payment fees from this point onwards.

HSBC disagreed with the investigator's view. They maintained that as payments being made were relatively modest, and by this point being made to established payees, and additionally the account being quite recently opened, there was no reason for them to consider these payments were unusual or out of character. They also questioned whether this can be confirmed to be a scam, rather than a relationship that has involved the sending of money which Mr S now regrets.

As HSBC disagreed with the investigator's view, the complaint has been referred 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

To start with, I have no doubt that Mr S has been the victim of a scam here, rather than a regretful relationship as HSBC has questioned. I think this is clear from the array of falsified documents Mr S was provided with, as well as the scam in many ways following the very typical presentation seen in friendship/romance scams of this nature. My decision is therefore to consider whether both parties did enough to prevent losses as part of this scam.

To begin with, HSBC has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer will therefore be assumed to be liable for payments they have instructed to be made. There is no dispute that Mr S authorised these payments, albeit under false pretences. On the face of it, he is therefore liable for the resultant losses.

The CRM Code can provide additional protection for the victims of APP scams such as this was. However, international payments are not within the scope of the CRM Code. So I cannot fairly apply the terms of the CRM code to any of the payments Mr S has made (the UK based payments having already been refunded as mentioned).

However, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud. I've therefore considered whether the instructions given by Mr S (either individually or collectively) were unusual enough to have expected additional checks to have been carried out before the payments were processed.

To decide this, I've reviewed the activity on Mr S's account statements, from which the payments were made, for the months leading up to the scam. This is often a finely balanced matter, and HSBC has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Mr S opened his account with HSBC in June 2019, so by the time he made the first payment to the fraudster in March 2020 he had been a customer for nine months. In this time, Mr S' account activity was almost entirely made of standing orders, moving money between Mr S' own accounts, as well as cash withdrawals up to the value of £300. In March 2020 when the scam began, Mr S began making international payments almost daily – between 24 March 2020 and 3 April 2020 he made eight payments to four different payees in two different countries – the value of the payments ranging between £9.33 and £2,500. On 6 April 2020 he then made a further payment of £2,500 to one of the existing payees.

I think that by this point, there was a sufficient change in Mr S' account activity. Until this point, Mr S had only made payments out of his account by regular standing order, or by ATM

withdrawals (plus a single card payment), so payment transfers of this type were new to the account. Added to this that the payments were international, to multiple countries and several payees, I think this combination becomes a potential hallmark of fraud. In addition, the payment of £2,500 was the second markedly higher payment in just a few days, again a further potential fraud indicator.

I therefore think at this point, there were enough notable changes to Mr S' account use that ought to have alerted HSBC that Mr S may be at risk of financial harm from fraud and made enquiries before processing this payment. Had HSBC contacted Mr S, I think it's more likely than not that Mr S would've been open about what the payments were for, as he had been with members of his family, as he genuinely believed he was helping someone in need. However, I think HSBC would've been able to identify that Mr S' situation included several hallmarks of friendship/romance scams – such as the payments being made internationally, the fraudster's own account being inaccessible but with the promise of future funds soon to be available and with the requests for money being urgent. Had Mr S been made aware that he may be falling victim to a scam, I think he would've asked more questions before proceeding - as he eventually did when advised by his son – and the scam would've been uncovered.

I appreciate HSBC's comments that the payment values in question weren't so significant that they would've triggered its fraud detection – but I think the overall picture here is important. A payment's value is one factor that is of course important when considering whether a bank should intervene on a payment, but it's not the only relevant consideration. Here there were multiple other factors at play – as mentioned, a new payment method, new payees, an increase in payment and these payments being international. I therefore think that the payment on 6 April 2020 is a fair point to say HSBC should've intervened.

Once HSBC was made aware of the scam, it's not entirely clear how quickly it contacted the receiving bank to attempt to recover Mr S' money. However, based on the time that had passed between Mr S making the final payment and reporting the scam (around two months), and the response from the receiving bank that no funds remained, I don't think swifter action on HSBC's behalf would've impacted its ability to recover any of Mr S' funds from the receiving bank.

I've also thought about whether I think Mr S did enough to protect himself from the scam. I can see how Mr S has been drawn in by the fraudster's seemingly small requests for help initially, and how, by the time he was asked for large amounts of money, he felt he had to continue in the hope of getting his money back. I have no doubt that Mr S believed he was helping someone in need and I don't underestimate the consequent strain this has put on himself and his family, which I'm genuinely sorry to hear about.

However, having considered all the available evidence as a whole, I think there were some red flags by April 2020 to alert Mr S that this may be a scam. Mr S hadn't known the fraudster for long when she left the country and so he was trusting her word that the issues she was facing were genuine based on limited knowledge of her as a person. I think some of the facts she presented to Mr S, such as her bank account being blocked for extended periods, and the need for him to make payments to multiple people on her behalf were questionable and ought to have raised cause for concern for Mr S. On this basis, I think it's fair that Mr S and HSBC share 50/50 liability for Mr S' losses from his payment towards the scam on 6 April 2020 onwards. Any international payment fees Mr S made towards the scam from 6 April 2020 onwards should also be refunded by HSBC.

I've also considered the compensation payment HSBC awarded for its failings during the complaints process and think this is fair to acknowledge the additional stress Mr S experienced at an already very difficult time.

### **My final decision**

My final decision is that I partially uphold Mr S' complaint against HSBC UK Bank Plc and I require HSBC to:

- Reimburse Mr S 50% of payments made on or after 6 April 2020 towards the scam
- Apply 8% simple interest from the date these payments were made until the date of settlement
- Refund all international payment fees incurred by Mr S towards the scam from 6 April 2020 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 March 2024.

Kirsty Upton  
**Ombudsman**