

The complaint

Ms N complains that HSBC UK Bank Plc hasn't refunded her the money she lost in an authorised push payment ("APP") impersonation/email intercept scam.

Ms N in bringing her complaint is being professionally represented. But for ease I'll refer mainly to Ms N throughout in this decision.

What happened

The background to this complaint is well known to all parties and so I won't repeat everything again here. But in summary, Ms N fell victim to an APP scam. On 27 August 2021, Ms N made a payment of £40,350 in branch to whom she believed to be her solicitor. She'd received an email containing the solicitor's account details. Unfortunately, that email had been intercepted and Ms N had transferred her funds to a fraudster. She became aware on 23 September 2021, after she'd spoken to the solicitor and was told her deposit hadn't been received.

Ms N contacted HSBC on 23 September 2021 to raise the claim. HSBC held Ms N liable for the loss. It said it'd provided Ms N with an effective warning when she made the payment.

Ms N complained to HSBC, and it issued its final response letter on 2 December 2021. In this, it reiterated its position that it held Ms N 100% liable for the payment she made as it had provided her with effective fraud warnings at the time she made the payment.

Remaining unhappy, Ms N brought her complaint to our service.

Our Investigator looked into things and upheld the complaint in part. He thought HSBC ought to have been concerned about the payment. He considered it to be significantly larger than typical payments from her account and that, when making the payment in branch, it was established that the account details had been given by email. He thought these characteristics ought to have appeared suspicious to HSBC.

Our Investigator noted that there was a disagreement about what happened in branch. Ms N recalls being asked about the payment purpose and the source of the funds, but not being asked if she'd verified the account details verbally or warned about the risks of not doing so. On balance, our Investigator, felt there was a suggestion that Ms N call the solicitor but that he didn't think the importance of doing so was put in the context of preventing scams. It followed that he didn't think, on balance, that Ms N was given a warning that was effective as defined by the CRM Code. He felt HSBC ought to have been concerned about the scam risk. He concluded that, had relevant scams been sufficiently explained, Ms N would've contacted her solicitor via other means and the scam would've unravelled and the loss prevented. Our Investigator didn't think Ms N had acted unreasonably when making the payment and, in turn he felt Ms N had a reasonable basis for believing the payment request was genuine.

So, our Investigator thought HSBC could've prevented Ms N's loss. He noted that Ms N had also raised a complaint against the receiving bank (where the funds were sent to) and that this service had partially upheld this complaint.

He explained that, while he thought HSBC was 100% responsible for the totality of Ms N's loss, given the outcome of her complaint about the receiving bank, it was fair and reasonable for the loss to be split between the two. With this in mind, he recommended HSBC reimburse Ms N £22,672.50 - this was 50% of £35,355 which he considered both banks ought to be equally responsible for and, the remaining £4,995 which he found HSBC 100% responsible for.

Ms N has provided us with information relating to consequential losses she's incurred. Having carefully considering these, our Investigator concluded that it was reasonably foreseeable that Ms N would have to make up the loss to buy a similar property and so he felt it was fair and reasonable that HSBC be held responsible for losses such as the interest-only mortgage Ms N was required to take out following the scam. However, he'd recommended HSBC pay 8% simple interest to reflect the time Ms N has been without the funds. He felt this covered the costs and interest payments associated with the mortgage.

Our Investigator didn't think the other consequential losses were reasonably foreseeable to HSBC, for example, around stamp duty, additional rent and storage payments.

Our Investigator thought about the non-financial impact of the scam on Ms N. He thought HSBC could've lessened the impact on Ms N and the disruption that was caused by the property sale falling through and her having to start over again, the stress of making up the shortfall in funds and the disruption this caused on her daily life for a number of months. He felt HSBC ought to pay £1,000 compensation for this unnecessary distress and inconvenience.

HSBC didn't agree with our Investigator's view. In summary it said:

- The outcome seemed to have been reached with the benefit of hindsight.
- It added that while there was no verbatim record of the conversation with Ms N, it felt it was clear from the evidence that the branch asked reasonable questions of Ms N at the time, and she was happy the details were correct and wanted to proceed.
- It was noted by the branch that it asked Ms N to verify the account details by phone, but Ms N chose not to. It adds that it logically follows that the branch mentioned the possibility of emails being intercepted.
- Whilst it was sorry that Ms N has been the victim of a scam, the distress and inconvenience she experienced was the result of an unscrupulous fraudster and not the bank. It didn't think the £1,000 award recommended was reasonable.

Our Investigator considered the bank's response, but his assessment remained unchanged. He felt it was more likely than not the questions in the warning document were asked but that no warning was read. He explained that he thought it was unlikely the branch staff would have had 'no concerns' but still read the warning, as that would have gone against HSBC's standard process. He said that if branch staff sufficiently appreciated the risk of going ahead with the transfer, that should have been documented more clearly at the time. Instead, we have a record that branch staff had 'no concerns at all' after the questions in the fraud warning document were asked and an acknowledgement of a Confirmation of Payee (CoP) warning was given rather than a scam warning.

Ms N, via her professional representative, accepted our Investigator's view. HSBC disagreed so it's been passed to me for a final 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.

I'm 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 here. 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.

There is limited information available here and the versions of events provided by Ms N and HSBC differ significantly. As a result, I have to base my findings on what I think is more likely than not to have happened in light of the available evidence and the wider circumstances.

Having done so, I uphold this complaint in part. I will now explain my reasons why.

It isn't in dispute that Ms N authorised the payment. As such the starting position is that HSBC ought to follow the instructions given by its customer in order for legitimate payments to be made as instructed. So Ms N is not automatically entitled to a refund.

However, HSBC is aware of this service's approach to cases involving these types of scams. Specifically, the expectation that HSBC should be monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that their customer is at risk of fraud; and in some situations, make additional checks before processing payments or to decline them altogether to protect customers from possible financial harm from fraud or scams.

Having looked at the operation of Ms N's account, in the months leading up to the scam, this payment was unusual and out of character. And given that the purpose of the payment was for a property purchase, where the payment details were received by email, (which the bank knew), HSBC was on notice that Ms N might be at risk of financial harm, specifically an email intercept scam.

HSBC say when making the payment Ms N was given a large purchase fraud warning. I understand the bank's agent would ask around ten questions of the customer about the payment. The agent would then record whether they have any concerns that the payment request could be a scam. If 'no' it says a warning is not required and to continue to make the payment.

HSBC has referred to its payment instruction documents where it says it shows the warning was given. From this, I can see that 'Y' is shown for set follow up questions asked and then it notes "no concerns at all" in response to the question 'any concerns with the customers answers'.

I find the information somewhat contradictory. In response to the follow up questions, it notes 'no concerns at all'. To my mind, it would suggest that HSBC's process meant that its agent wouldn't have gone on to provide a scam warning as it's noted that they had no doubts about the payment Ms N was asking to make.

I am mindful there is a difference in Ms N's and HSBC's version of events. Ms N doesn't recall any scam warnings being given at the time of the payment – but recalls being asked the purpose of the payment and about the source of the funds.

HSBC to support its position has also provided a statement from a branch employee. This says:

'My colleague explained to the customers that we are unable to check name and he has asked the customer to call the solicitors to double check however customer was sure all is correct. As per our usual procedures we had done the effective customer warnings. Also managed to find the payment paperwork where [name] had explained the COP was unable to check and he gave the customer the correct warnings, customer even signed below to further confirm this.'

Turning to the Confirmation of Payee (CoP) document HSBC say Ms N signed, I note this shows:

'Unable to check name: We can't check the details you entered, as the beneficiary's bank doesn't offer this service. Before processing with the payment, you should contact the beneficiary and confirm their account details via phone number or email from a trusted source.'

This document also shows a hand-writing statement *'customer confirm a/c detail are correct by email. Customer has not call client a/c to confirm'*.

I think its important to note that the above, is a response to a CoP warning and is not a scam warning. It informed Ms N that the receiving bank didn't offer CoP and recommended she contact the beneficiary and confirm the account details via phone number or email from a trusted source.

I don't think it can be ignored here that Ms N was under the belief that she had received the account details from a trusted email address for her solicitor. From the correspondence that I've seen, there is a discreet difference between the email address the fraudster used and that of the genuine solicitor's– one letter. And the emails were within a chain of legitimate emails. So, I'm persuaded that Ms N would have considered the account details to have been received from a trusted source.

Further, the CoP document notes that the account details were received by email and that Ms N had not called the solicitor to confirm, yet the bank proceeded to process the payment.

On balance, I'm not persuaded it is more likely than not that HSBC did provide a scam warning at the time. I think it is more likely that the branch agent asked about the payment, although there is no documentation to show which questions were asked and what answers Ms N provided, and that the agent didn't have any concerns about her answers.

I'm not satisfied HSBC has shown it provided Ms N with a scam warning that brought to life what an email intercept scam really looked and felt like. Had it done so, and a meaningful conversation happened, such as the bank providing the context and prevalence of email intercept/impersonation scams – such as how email addresses can be cloned or slightly altered so that they appear to be genuine and, the significance of contacting the solicitor on a verified and trusted number to confirm the payment details, I think this more likely than not would've prevented the scam.

Given the significant value of the payment, I think it is extremely unlikely that Ms N wouldn't have checked the details if she'd been warned in this way and, had she done so, the scam would've unravelled.

I'm also not persuaded that she should bear any responsibility for her own loss here. The emails from the fraudster were almost identical to genuine emails received and Ms N was expecting to make a payment, so it wouldn't have come as a complete surprise. This was a clever and sophisticated scam, and I'm not persuaded Ms N can be said to have failed in her responsibilities by believing the payment details came from the genuine solicitor.

HSBC has pointed out that Ms N made a previous payment to her solicitor in November 2020 and this was to different account details. I don't find this changes my conclusions here. Ms N has explained that this payment was for a different property purchase that had fallen through. Ms N explained to us that the information relating to this purchase and the solicitor details were held in a storage unit and that this was not to hand at the time of making the payment in August 2021. I don't find what Ms N has told us to be implausible and I am mindful that a business can change bank accounts from time to time. In any event, the information HSBC has highlighted was in its possession at the time Ms N made the payment and would've also been available to the branch staff. It follows that I don't consider this point in isolation alter my conclusions.

To summarise, given Ms N had told the bank the payment was for a house purchase and the bank was aware that she'd received the payee details by email. It should've warned her in the way I've described, but I'm not persuaded that the evidence shows it did so. If it had, I think it is more likely than not that the scam would have been uncovered and HSBC could have prevented the loss Ms N incurred.

For the avoidance of doubt, I'm mindful that the CRM Code applies here too, but it's not material to the outcome I've reached here. This is because, as our Investigator explained, the loss is one HSBC could've prevented.

Consequential Losses

Having carefully considering all the evidence provided to us, I agree with the findings of our Investigator on this aspect. I'm mindful that Ms N has referred to additional rent payments and storage costs and that, when she purchased a new property, she had to pay a higher stamp duty amount. But I don't find these aspects to be reasonably foreseeable to HSBC and so, I make no award in respect of these.

I agree, largely for the same reasons already set out by our Investigator in his view that, it was reasonably foreseeable to the bank that Ms N would be required to make up any shortfall in funds should her money be lost to a scam and in proceeding with a property purchase. So, I agree that it is fair and reasonable that HSBC be held responsible for the losses that relate to the interest-only mortgage Ms N took out to purchase a later property. This said, I also find the 8% simple interest recommended, for the time Ms N has been deprived of the funds, to cover the costs and interest payments associated with the mortgage and so make no further recommendation in relation to this.

I also find that, if HSBC had handled the branch interaction differently, Ms N wouldn't have incurred the £17 CHAPS fee and so this should be refunded too.

Distress and convenience

Deciding on an award of compensation for distress and inconvenience, isn't an exact science. And I don't have the power to make any punitive award against HSBC. It is also not intended to compensate for any actual financial loss a consumer has experienced.

I also need to carefully consider the impact HSBC's mistakes have made, not those of the other parties involved here. Most significantly, this means attempting to discount the actions of the fraudster, who was ultimately the party who committed this fraud on Ms N and, as such, was the direct cause of Ms N's losses and the subsequent impact.

Based on what I've seen and been told, I'm persuaded that had HSBC acted as I think it should have done, then the impact on Ms N would have been lessened. I do think this is a case where HSBC's mistakes have caused distress to Ms N. As a result of the scam, Ms N lost a considerable amount of her savings and has explained how this impacted on her day-to-day life – worried that she would find herself homeless and impacting her sleep and mental health. Further, Ms N has explained the distress and anxiety she felt at having to take out an interest only mortgage to make up the lost amount when later proceeding to purchase another property.

Taking everything into account and thinking about the share of the impact reasonably attributable to HSBC here, I still consider it appropriate to make an award of £1,000 as recommended by our Investigator for the material distress and inconvenience Ms N has suffered.

Putting things right

As I've explained above, Ms N also raised a complaint against the receiving bank of the account her funds were sent to. I understand Ms N has since received a refund of £17,677.50 plus 8% simple interest.

With this in mind, I require HSBC UK Bank Plc to:

- Refund £22,672.50 – this represents the amount of the scam loss which I consider HSBC to be responsible for;
- Refund the CHAPS fee of £17;
- Pay simple interest on the amount to be refunded, from the date the payment was made to the date of the settlement. The interest rate should be 8% a year. †
- Pay £1,000 compensation to reflect the distress and inconvenience caused.

† HM Revenue & Customs requires HSBC UK Bank Plc to take off tax from this interest. HSBC UK Bank Plc must give Ms N a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint in part against HSBC UK Bank Plc. I require it to settle the matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 24 April 2024.

Staci Rowland
Ombudsman

