

Complaint

Mr G is unhappy that HSBC UK Bank Plc didn't reimburse him after he fell victim to a scam.

Background

In August 2022, Mr G fell victim to a scam. He received a call from someone who purported to be an employee of HSBC. According to Mr G, they knew some basic details about him and his account. They were able to point to three unauthorised payments that had left his account. These showed, they told him, that the account had been compromised.

Mr G says that he was asked to compare the number he was receiving the call on to the number on the back of his bank card. The two numbers matched and so he was persuaded that he was speaking with a genuine employee of the bank. Unfortunately, that wasn't the case. Mr G had been called by a fraudster.

He was told that it wasn't just the funds he held with HSBC that were at risk, but any funds in an account linked to him. This included a savings account he held with a business I'll refer to as N. He moved a little under £25,000 from his account at N to his HSBC account. He was then asked to move those funds on from HSBC to an account he held with another business that I'll refer to as R. The funds were then dispersed from his account with R to separate accounts that were controlled by the fraudsters. Once he realised that he'd fallen victim to a scam, he notified HSBC. HSBC didn't agree to refund his losses. It said that the account with R was in Mr G's own name – and so it didn't agree that it could be considered responsible for his losses.

Mr G was unhappy with that response and so he referred a complaint to this service. He also separately complained about the actions of N. He didn't refer a complaint about R to this service because R falls outside of our jurisdiction. The case was looked at by an Investigator who upheld it. She noted that HSBC was expected to be on the lookout for payments and account activity that was unusual or out of character and might have been indicative of fraud risk. In this instance, she was satisfied that the first payment Mr G made from his HSBC account was clearly out of character. She thought HSBC shouldn't have made that payment without first contacting him to satisfy itself that he wasn't at risk of financial harm due to fraud. If it had done so, she thought it was likely the scam would've been uncovered and Mr G's losses prevented.

However, the Investigator also considered the fact that Mr G had moved his funds from his account with N to his HSBC account. She considered that N should also have done more here. For that reason, she recommended that N and HSBC should each be responsible for 50% of Mr G's losses.

N has since responded to say that it agrees with the Investigator's recommendation that it pay 50%. HSBC didn't agree with the Investigator's view. It said that R would be better placed to identify the risk of a scam given that it was the account from which Mr G transferred funds to the fraudster. It also thought Mr G should've been concerned at being asked to transfer funds from his account with N to his HSBC account. It says he should've recognised that no bank would ask him to move his money in that way.

Because HSBC didn't agree, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that HSBC be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

Mr G made three payments as part of this scam and the Investigator concluded that it should've been concerned at the point of the first one. I'd agree with that conclusion. I've looked at the statements for Mr G's account for the months prior to the scam. A payment of over £10,000 was significantly out of character for him. The payment was also accompanied by an unusually large deposit into his HSBC account before the funds were moved on, which was another risk factor HSBC should've identified here.

It shouldn't have processed that first payment without first making enquiries with Mr G to satisfy itself that he wasn't at risk of financial harm due to fraud. There's no evidence to suggest that he was asked to mislead any employee of the bank who called him and so I'm satisfied it's more likely than not that he'd have responded to any such queries openly and honestly. If he'd done so, it would've been a fairly straightforward exercise for an employee of the bank to explain that the call he'd received wasn't from a genuine employee and that he'd been targeted by a commonly occurring scam type. As a result, he would've been prevented from making that payment and the subsequent ones.

I've also considered whether he can be considered partially responsible for his losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. In this case, I don't think that Mr G acted carelessly to the extent that he should bear responsibility for his losses. The fraudsters were able to take multiple steps to create the false assurance that he was speaking to an employee of the bank, including spoofing a genuine HSBC phone number and sending him text messages which appeared to have come from HSBC.

HSBC has argued that he ought to have found it unusual that he was asked to move money from his account with N to his HSBC account and that no bank would ever ask him to do this. However, considering Mr G was inexperienced in these matters, I don't find it strange that he was persuaded by the scammer's explanation on this point, particularly given that he'd already accepted in his own mind that the call had come from a genuine employee of the bank.

I have also taken into account that Mr G transferred the money to an account in his own name, rather than directly to the fraudster, so he remained in control of her money after he made the payments from his HSBC account. Further steps were needed before the money was lost to the fraudsters.

However, I am satisfied that it would be fair to hold HSBC responsible for his losses. As I have explained, the potential for multi-stage scams ought to have been well known to HSBC and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams. I'm satisfied HSBC should fairly and reasonably have made further enquiries before the first payment and, if it had, it is more likely than not that the scam would have been exposed and Mr G would not have lost any more money. In those circumstances I am satisfied it is fair to hold it responsible for those losses.

As explained earlier in this decision, N has already agreed to refund 50% of Mr G's losses and so HSBC only needs to refund the remaining 50%.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr G accepts my decision, HSBC UK Bank Plc should pay him 50% of the money he lost to the scam. It should add 0.25%¹ interest per annum to that sum calculated to run from the date the payments were made until the date any refund is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 March 2024.

James Kimmitt
Ombudsman

¹ This is the rate of interest applicable to the originating account Mr G held with N.