

The complaint

Mr C and Mrs C complain that HSBC UK Bank Plc (HSBC) won't refund money they lost in a 'safe account' scam.

What happened

What Mr C and Mrs C say:

Mr C told us that on 26 December 2023, he had some calls from someone who said he was from HSBC's fraud department and told him his account had been compromised. On the same day, he had text messages from HSBC about a genuine and valid payment he had made.

Mr C called HSBC at 00.03 on 27 December 2023 to ask if HSBC had called him. After that, he made four more calls to HSBC to ask if the bank had contacted him. The further calls were on 27 December 2023 (one more call) and 28 December 2023 (three calls).

The scammer called Mr C several times during the same period and convinced him that he should move money to his account at an online bank (which I will call 'bank A'). He was told it would then be safe (a 'vault'). Mr C moved money to HSBC from other bank accounts and then, between 26 December 2023 and 28 December 2023, made three payments to his existing account at bank A.

Mr C says payments totalling £14,761 were then made from bank A on 28 December 2023, and the money was lost.

Date/Time	Payment	Amount
26 December 2023 – 20.16	Open banking payment to bank A	£2,590.74
27 December 2023 – 13.23	Open banking payment to bank A	£9,188
28 December 2023 – 10.53	Open banking payment to bank A	£3,066.78
Total payments from HSBC account		£14,845.52

Mr C and Mrs C complained. They said Mr C called HSBC twice - to check the validity of the calls and was told HSBC did call him. Therefore, he considered the scammer to be genuine and working for HSBC. He said HSBC should've done more to protect him, e.g. by calling him proactively when the payments were made. They accepted that HSBC had refunded the two final payments but say the first payment should also be refunded.

What HSBC said:

HSBC said:

- On 26 December 2023, HSBC detected a possible (unrelated) fraudulent payment from Mr C and Mrs C's account and texted them to confirm the payment was genuine. Mr C responded to that and HSBC asked him to call the bank.
- At or around the same time, a scammer contacted Mr C and said he worked for HSBC. He convinced Mr C that his account was under threat and that he should move his money to bank A.
- Mr C then made three payments to bank A.
- The Contingent Reimbursement Model (CRM) Code didn't apply – as the money was sent to an account in Mr C's name (at bank A). And the losses were incurred when the payments were made from bank A.
- But HSBC reviewed the calls made by Mr C and because there was a mixture of genuine fraud alerts (from HSBC) and fraudulent calls, this made for a difficult situation for Mr C.
- On the first call between HSBC and Mr C (at 00.03 on 27 December 2023), Mr C was given warnings about moving money to a safe account. But HSBC also said the that call handler should've realised that Mr C had got a call from a scammer and done more to advise Mr C at that stage and to protect him.
- When Mr C called again on 27 December 2023, he was advised that the call from the scammer was fraudulent and advised not to make any transfers to a 'safe account'. But he was also told there had been a genuine call from HSBC that day – when there hadn't.
- HSBC refunded the second and third payments - £12,258.78. But didn't refund the first one – as they said the bank had no opportunity to intervene in that payment.

Our investigation so far:

Mr C and Mrs C brought their complaint to us and our investigator agreed with HSBC's decision not to refund the first payment. She didn't think it was large enough for HSBC to have identified it as unusual. And it was going to an account in Mr C's name, so it wouldn't have raised any concerns.

Mr C and Mrs C asked that an ombudsman look at their complaint. They added that:

- They'd reported the scam to bank A.
- The first payment was done on boxing day night, an unusual time to be making payments. So – HSBC should've intervened.

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 sorry to hear that Mr C and Mrs C have lost money in a cruel scam. It's not in question that Mr C authorised and consented to the payments in this case. So although Mr C didn't

intend for the money to go to a scammer, Mr C and Mrs C are presumed to be liable for the losses in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC 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 that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr C and Mrs C when Mr C made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Mr C's own account with bank A.

I listened to the calls made by Mr C to HSBC on 27 December 2023 and 28 December 2023.

First call – 27 December 2023:

Mr C asked if HSBC had called him – as he wanted to know if the call from the scammer was genuine or not. So here, he was doing the right thing – he called HSBC on the number on the back of his debit card. The call handler did give Mr C a warning – that HSBC wouldn't ask a customer to move money to a safe account. But on the other hand, Mr C did say clearly that he had been asked to do that – and at that point, I agree that HSBC should've picked up on that and realised there was a scam going on and taken action to clearly advise Mr C about what to do.

I also heard HSBC say that they had called him – and so there was confusion about whether the scammer's call was genuine or not.

Second call – 27 December 2023:

Mr C asked again if the calls from the scammer were from HSBC. HSBC advised him there hadn't been contact from the bank, and I heard the call handler say three times that the calls from the scammer – asking Mr C to move money to a safe account – were “100% a scam”.

But other than that, the rest of the call was confusing – and I suspect HSBC's warning was

lost in the confusion. And therefore – HSBC should've been very firm and clear that Mr C was the victim of an ongoing scam, and clearly advised him what to do. But this didn't happen.

Calls – 28 December 2023:

There were three calls – and in summary, there was further confusion between Mr C and HSBC as to whether genuine calls had been made by HSBC or not. So that wasn't helpful to Mr C. I think Mr C was calling HSBC again – as he was still getting calls from the scammer and wanted to know what to do. So, I can see why Mr C then made the third payment to bank A.

Therefore, I agree with HSBC's action to refund the second and third payments – as they have done.

First payment of £2,590.74 – 26 December 2023:

I need to consider whether HSBC should refund this payment.

I looked at Mr C and Mrs C's account – and it was used for day-to-day expenditure, and payments were less than £1,000. So, the payment of £2,590.74 was larger than they usually made.

But - there's a balance to be made: HSBC has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. And here - this was a payment for a relatively low amount. Therefore, in this case, I think HSBC acted reasonably in processing the payment – I don't think that I could reasonably say that HSBC should have stopped the payment for further checks.

I say this also in the light of the fact that the payment on 26 December 2023 - was before Mr C made any calls to HSBC. So - HSBC hadn't been advised of the scam. And I also noted that it was to an account in Mr C's name at bank A; and he had also made payments to that account before – he made 56 payments to bank A in the 12 months up to the time of the scam. So, I can see why HSBC didn't consider the payment as being unusual.

I've considered whether the fact that the payment was on boxing day night was unusual – and I'm not persuaded it was, as customers can make payments on any day of the year. I've seen nothing to suggest that means HSBC should've been more vigilant than on any other day.

Given all of this, I don't consider I can reasonably ask HSBC to refund the first payment of £2,590.74.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I cannot see if HSBC contacted bank A to try to recover the money.

But here, I can see that the payments were made from bank A on 28 December 2023, and so no money remained to be refunded in any case.

Mr C has complained to bank A about the payments made from that account, I can see that that complaint has also been brought to this service to look at. In that respect, he should note that my decision here only relates to the actions of HSBC, and not of bank A – they will need to be assessed separately.

I accept that Mr C and Mrs C will be disappointed by my decision, but I am not asking HSBC to do anymore here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 3 May 2024.

Martin Lord
Ombudsman