

The complaint

Miss N complains that HSBC UK Bank Plc (HSBC) won't refund money she lost in an impersonation scam.

What happened

What Miss N says:

On 29 September 2023, Miss N got an email which purported to be from her manager where she worked. It asked her to buy eight gift cards at £50 each – to reward some members of staff. She bought the gift cards from a retailer and emailed them (and the access codes) back to her 'manager'.

But – it turned out that the email had come from someone (and an email address) impersonating Miss N's manager. When she realised it was a scam, she went to her local branch of HSBC on 2 October 2023. A claim, and then a complaint was sent to HSBC.

The payment was:

Date	Payment	Amount
29 September 2023	Retailer – debit card	£400

HSBC asked her to try to get a refund from the retailer, which she did, without success. So – she lost the money. She says she's suffered a lot of anxiety and emotional stress because of the loss. It has made it tough for her and each month she goes overdrawn as a result. She also said HSBC were slow to respond to her claim and complaint.

In October 2023, HSBC said:

- The bank didn't refund the payment as it had been made and authorised by Miss N.
- Miss N then appealed HSBC's final response and in December 2023, HSBC didn't change their decision. But in view of the delay in responding, paid compensation of £50.

(continued)

Our investigation so far:

Miss N brought her complaint to us. Our investigator didn't uphold it. She said:

- The payment was larger than Miss N usually made.

- But the amount wasn't large enough to say HSBC should've contacted Miss N about it.

Miss N asked that an ombudsman look at her complaint, and so it has come to me to make 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 sorry to hear that Miss N has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Miss N didn't intend for the money to go to a scammer, she is presumed to be liable for the loss 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 Miss Ns when she made the payment, 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 a UK beneficiary – and in this case, the payments were made by Miss N's Visa debit card.

The important matter here is whether this was a payment that HSBC might reasonably have considered unusual, and therefore whether they should've held or stopped the payment and contacted Miss N about it.

I looked at Miss N's account history with HSBC. And I don't think the payment was unusual for her. She made regular payments from her account; and there was a regular larger debit card payment of over £500 each month – i.e. more than the scam payment in question. In September 2023, I could also see a payment of £1,740. So – I don't think I could reasonably say HSBC should've viewed the payment of £400 as unusual and stopped it.

There's also 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 single payment and 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.

Miss N has said HSBC were slow to respond to her claim and appeal. But I can see her first complaint was responded to on 19 October 2023 (just over two weeks after Miss N reported the scam). That was reasonable.

After Miss N appealed, HSBC admitted they took too long to review that (until 14 December 2023). But to be fair to HSBC, they paid compensation of £50 for that delay, which I think was a reasonable thing to do.

Recovery: Because the payment was made with a visa card, there was no reason for HSBC to contact the retailer to try to get the money back – as it was a 'confirmed' payment.

I considered if Miss N could've made a 'chargeback' claim. The chargeback process is a voluntary one – customers are not guaranteed to get money refunded, and there are strict scheme rules in place by the card schemes (e.g. Visa and Mastercard) which govern chargebacks.

In general terms, chargeback can provide a refund where a customer has bought goods or a service which isn't provided or is not what was advertised. So – that wasn't the case here, as Miss N did get the gift cards – but then unfortunately sent them to the scammer. This was an authorised payment and a chargeback had no reasonable prospects of success.

Miss N has lost a lot of money. She's explained why the money was important to her, and the impact her losses have had. I was sorry to learn of her circumstances. She will therefore be disappointed by my decision, but I'm not going to ask HSBC to do anything more here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 8 May 2024.

Martin Lord
Ombudsman