

The complaint

Ms I is unhappy that HSBC UK Bank Plc won't refund the money she sent to a third party.

What happened

Ms I started chatting to someone on an online dating site. After building up a relationship with this person they began asking her for money and, ultimately, she discovered they were not who they said they were. This individual began to blackmail Ms I, threatening her and her family, and extorted over £9,000 from her over the course of a few months.

Ms I made some of these payments from an account she held with another bank, but most of them were made from her HSBC current account and her HSBC credit card account. The payments were card payments to Electronic Money Institutions (EMI's) that converted the money to foreign currency for Ms I and from where she then sent those funds on to the blackmailer.

Ms I reported what had happened to HSBC in September 2023, when she was sure that her family was safe. HSBC did not agree that it had any liability for her loss, it said she should speak with the EMI's where the funds were ultimately sent to the blackmailer from.

Ms I was unhappy with HSBC's response, and with how it had handled her concerns, so she referred her complaint to our service.

On reviewing Ms I's concerns, HSBC agreed it made errors in its letters to her, and offered £100 compensation for any distress caused by that. Our Investigator felt that was a fair offer, but they did not think that HSBC had any obligation to refund Ms I's loss to her.

Ms I remained unhappy, so as no agreement could be reached her complaint has been passed to me for review.

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.

Having done so, I can see no basis on which I can fairly require HSBC to refund the money Ms I has lost. I can appreciate this is not the outcome Ms I was hoping for, so I will explain why.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams in all but a limited number of circumstances. But as the investigator explained, the CRM Code does not apply in this case. All of the payments Ms I is complaining about were card payments and the CRM Code only applies to payments made via faster payment, CHAPS, or internal book transfer. So, I won't be considering the CRM Code any further here.

I'm also satisfied these disputed payments were all authorised by Ms I as she says she knowingly made the payments because of a threat of blackmail against her. And, in broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises using their payment tools, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

This means that Ms I is presumed responsible for the payments in the first instance. So, unless there was a breach or failing by HSBC that ought to shift liability, HSBC is not responsible for reimbursing her loss.

However, based on relevant regulations and various principles of good practice, there are certain circumstances where I would expect a bank, such as HSBC, to intervene with a consumer's payment instructions. Should the situation warrant it, HSBC could be held accountable for Ms I's loss if it failed to identify and act upon transactions that were unusual or uncharacteristic enough compared to her typical account activity *and* if any such intervention from HSBC was likely to have prevented any further loss.

So, in this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Ms I when it processed the card payments or whether it should have done more than it did. In doing so I've thought about whether the payments Ms I made were out of character and unusual enough so that HSBC ought to have challenged them, and, if it had done so, whether it would have made a difference to what happened.

I am not entirely convinced that the succession of payments Ms I complains about exhibited particularly concerning or irregular account behaviour – certainly to start with. Ms I's bank statements in the months leading up to the disputed payments confirm that making card payments to a money remittance service wasn't something she typically did. But the largest payment she made was £1,000 and the payments were, at least to start with, fairly spread out. It's not uncommon for someone to make a large payment for a specific purpose and on the face of it, there's nothing unusual about these payment amounts in and of themselves given Ms I's usual spending. I do though agree with our Investigator that it is arguable that by the time Ms I made four payments in one day, to the same EMI and for the same amount each time (£300) HSBC might reasonably have been expected to step in. This pattern did potentially have some hallmarks of a scam. So, I have gone on to think about whether intervention could reasonably have made a difference here.

I'm required to make this decision based on the balance of probabilities; that is, what I find is more likely than not to have happened. I've carefully considered all of the available evidence, paying particular attention to what Ms I knew at the time. And, having done so, it is difficult to say that intervention would have made a difference here.

Ms I knew she was being blackmailed, she was aware that she was paying someone specifically to prevent them from either harming her family or sharing private photos and personal information with people she knew. I can't see how HSBC would have been able to uncover such a situation given that any warnings it gave would be geared towards APP scams – where someone is being tricked into paying someone through *deceit*. In this case Ms I was paying under *duress*, but she knew who she was paying and why she was paying them. And from what I've seen it seems that Ms I was set on making these payments to protect herself and her family, so I consider it more likely than not that Ms I would not have been open and honest with HSBC about the true purpose for the payments if it had asked her.

Ms I has my sympathies, she's clearly been through a very distressing ordeal. But overall, I'm not satisfied that there has been a bank error in this case. This is not to say that Ms I hasn't been a victim of an awful crime - just simply that I don't think I can hold the bank

accountable in this case. I am sorry to have to deliver this news to Ms I and I do understand why she feels so strongly about this complaint. But my role as an Ombudsman is limited to determining whether HSBC bears any responsibility for her financial loss. And, everything considered, I cannot fairly and reasonably hold HSBC liable in these circumstances.

I've also considered whether, on being alerted to the scam, HSBC could reasonably have done anything to recover Ms I's losses, but I don't think it could. The only possible options for recovery here, given the payments were made by debit and credit card, would have been via chargeback or Section 75 claims. But given these transactions were for the transfer of funds via the EMIs, I don't think any such claims would have likely been successful as Ms I had already sent the funds to the scammers from her EMI accounts. And it's likely any attempted claims for the disputed payments would've resulted in the EMIs defending them on the basis they did what they were asked to do – that being the funds were credited to Ms I's own EMI accounts which were set up and used by her.

I note HSBC's offer to pay Ms I £100 to recognise that it made some errors in its handling of her complaint, and I'm satisfied that offer is reasonable in the circumstances. I've not seen anything to show that HSBC has otherwise treated Ms I unfairly or unreasonably. So, although this doesn't undo the loss Ms I has suffered, I think £100 is a reasonable amount of compensation in the circumstances of this case.

I know this will be disappointing for Ms I, but I hope she will understand the reasons for my decision.

My final decision

I do not uphold this complaint, I am satisfied that the £100 compensation HSBC UK Bank Plc has already offered to Ms I is fair. HSBC Bank UK Plc should now pay that compensation to Ms I.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 9 May 2024.

Sophie Mitchell
Ombudsman