

The complaint

Mr J complains that HSBC UK Bank Plc didn't treat him fairly after he paid money to an HSBC account during an email interception scam.

Other complaints concerning the same scam are the subject of separately issued decisions. This decision concerns HSBC solely.

What happened

In 2022, Mr J was in the process of purchasing a property for investment purposes.

He received an email that appeared to be from his solicitor asking him to make payment. Unbeknown to Mr J at the time, that email had originated from a fraudster.

Mr J proceeded to pay £25,000 from an account he holds with another bank to a beneficiary account held with HSBC. A limited company (for which Mr J is the company director) also made a payment as a result of the same scam.

HSBC was able to recover the full amount of the funds Mr J paid from his personal account but only part of the limited company's payment.

Mr J thought HSBC could have done more and referred his complaint to this service.

Our Investigator considered what had happened. He looked into HSBC's actions, including the beneficiary account opening process and whether the bank should have identified concerning account activity. The Investigator didn't find that HSBC had missed an opportunity to have prevented the scam that had occurred. He didn't find it liable for the losses Mr J had incurred.

But the Investigator thought HSBC ought to have returned the recovered funds sooner than it did. In line with UK Finance's Best Practice Standards, the funds ought reasonably to have been returned fifteen days after HSBC had been notified by Mr J's bank in the absence of any factors that would have delayed this. That meant the funds should have been returned to Mr J's bank on 16 November 2022. But HSBC only returned the funds to Mr J's bank on 28 July 2023.

The Investigator said HSBC ought to pay Mr J interest calculated at a rate of 8% simple per year from 16 November 2022 to 28 July 2023 to reflect the length of time Mr J had been deprived of the money he'd paid.

The Investigator subsequently clarified that this applied to the sum recovered from the payment Mr J had made from his personal account but did not apply to the sum paid from the limited company account. While Mr J had made the payment on that company's behalf, the company was a separate legal entity - and further, Mr J had been purchasing this property as a personal investment not in the company's name. Unfortunately, under the Financial Ombudsman Service's rules, in this scenario he was unable to bring a valid complaint about HSBC in respect of that payment.

HSBC accepted this outcome. But Mr J didn't accept the investigator's findings. He thought HSBC should be liable to pay him more. He thought it hadn't done enough to prevent the scam. He didn't agree it shouldn't be required by the Financial Ombudsman Service to pay him interest for the money that had been sent from the limited company account.

In light of this disagreement, I have been asked to reach a final decision on Mr J's complaint.

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 have reached the same outcome as that reached by our Investigator, and for broadly the same reasons.

HSBC held the account to which Mr J's funds were sent. He was the victim of a criminal scam, as was his limited company. While the funds have now been returned to his personal account, this took HSBC some time to arrange. And the limited company has not been fully refunded.

The limited company payment

Before I turn to Mr J's complaint about the payment made from his personal account, I should explain why the payment made from the limited company to HSBC isn't something I have the power to consider.

As our Investigator explained, and as covered separately in another decision on the subject, making a payment from the limited company's bank account has consequences on any complaint that could be brought about HSBC by Mr J or by the limited company itself.

Mr J and the limited company and not one and the same thing, these are distinct and separate legal entities (and that applies even if Mr J regards them as one and the same).

As a result, something being purchased by Mr J (as was happening here) is not the same thing as something being purchased by the limited company. I am satisfied that the property purchase was for Mr J's benefit, and not that of the limited company – based on Mr J's own testimony and the documentation available to me.

The payment made from the limited company's account was in effect Mr J withdrawing an asset from the limited company for his own use. I think most likely this would either constitute a loan from the company to its director or a return of capital, the payment of dividends or some other debt owed by the limited company to Mr J.

When the payment was made to the incorrect payee as the result of this scam, the funds were lost. But the loss here was incurred by Mr J not by the limited company. That means there would be no loss incurred by the limited company for me to consider. And because the payment was made from the limited company's bank account, it is the payment service user and under the rules that govern the Financial Ombudsman Service's operation, only the limited company could bring a complaint about that payment (not Mr J).

The above is included as a brief summary of matters that have already been dealt with more fully in a separate decision concerning the payment made from the limited company account.

The payment made to HSBC from Mr J's personal account

The funds that Mr J paid from his personal account to HSBC have now been returned to him in full. Nevertheless, I've considered whether HSBC was at fault in what happened and whether that might mean HSBC needs to do more to put matters right.

While Mr J's complaint about HSBC does not stem from a direct customer relationship he holds with the bank, I can nonetheless consider the complaint because it contains the allegation that the matter was potentially an Authorised Push Payment scam (APP scam).

In what follows I'll be considering solely the actions of HSBC – as the Receiving Bank for the account to which Mr J made payment. Mr J's complaint about his own bank has been considered separately in a final decision.

Relevant here is the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). While the CRM code is voluntary it would apply to the payment Mr J made, and sets requirements for a firm in preventing detecting and responding to an APP scam.

Among other things, regulated firms receiving payments like HSBC, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements.

Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

And, more generally given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, I think firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting customers from financial harm as a result of fraud or financial abuse - Code of practice').

And I'm satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

Also relevant in this case, as mentioned earlier, is the CRM Code that HSBC has signed up to. The relevant requirements for Receiving Firms under the CRM Code (at the relevant time) include the following:

"CRM Code: Payment Journey – Receiving Firm

SF2 Receiving Firms should take reasonable steps to prevent accounts from being used to launder the proceeds of APP scams. This should include procedures to prevent, detect and respond to the receipt of funds from APP scams. Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

Prevention

SF2(1) Firms must take reasonable steps to prevent accounts being opened for criminal purposes. [...]

Detection

SF2(3) Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. [...]

Response

SF2(4) Following notification of concerns about an account or funds at a receiving Firm, the receiving Firm should respond in accordance with the procedures set out in the Best Practice Standards. [...]"

In considering all of the above, and to determine if HSBC met the standards required of it under the CRM Code, I have looked at whether HSBC opened the receiving account correctly, whether there was anything in the way the account was being used that should have given HSBC cause for concern and finally; once notified of fraud did it act appropriately and in a timely manner. And if I consider there were failings in relation to any of the above, I have to consider whether HSBC's acts or omissions fairly resulted in a loss to Mr J.

I would like to explain to Mr J at this point, that while HSBC has provided our service with information about the receiving bank account – it has done so in confidence. This is to allow us to discharge our investigatory functions and HSBC has provided that which is necessary for the determination of this complaint. Due to data protection laws our service can't share any information about the beneficiary, the receiving bank account or any investigation and action HSBC subsequently took. However, I would like to assure Mr J that I have thoroughly reviewed and considered all the information provided before reaching my decision.

Prevention - account opening

To help decide whether or not a bank failed to prevent the losses of an APP victim when opening the beneficiary account, we would generally ask to see evidence that; it correctly followed its account opening procedures; carried out checks to verify the identity of the named account holder; and did its due diligence when opening the account.

I appreciate Mr J has said he doesn't think HSBC has followed correct procedures as an account was opened and was subsequently used fraudulently. But in the circumstances of this complaint, I'm satisfied that HSBC carried out checks to verify the identity of the named account holder and did its due diligence when opening the beneficiary account.

There wasn't anything at the time that I think reasonably could've alerted HSBC that the account it was opening would later be used fraudulently. So, I'm satisfied HSBC has taken reasonable steps to prevent the accounts being opened for criminal purposes and it didn't miss an opportunity to prevent Mr J's loss when opening the account.

Detection - account activity

The primary duty of a bank is to follow their customer's instructions and make payments as directed in line with the mandate – which is usually set out in the terms and conditions of the account. The CRM Code sets out that Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. This ties in with long standing expectations that Banks and Building Societies should monitor their business relationships and to be alert to other risks - such as fraud, which would include giving consideration to unusual and out of character transactions.

I've looked at the account history for the beneficiary account and I can't say there was any account activity that I think would reasonably have stood out to HSBC as suspicious or

significantly outside of what might be expected for an account of that type. I'm also satisfied there was no notification of fraud on the account prior to the payment Mr J made into the account and no other red flags where it could reasonably be argued that HSBC might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions.

So, from what I've seen, I'm satisfied HSBC has demonstrated that it has taken reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. I also don't think HSBC ought reasonably to have had concerns to the extent I would have expected it to have intervened, so I can't fairly say that it could have prevented Mr J's loss in this way either.

Response to notification of fraud

The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of APP fraud and notify the Sending Firm if any funds remain for recovery. Here, once notified of the scam, I'm satisfied HSBC took the necessary actions required of it.

However, all of the funds Mr J had sent from his personal account had been frozen in the beneficiary account by HSBC and were available for return to Mr J's bank. HSBC should have done so within the timescales set out in the Best Practice Standards. These indicate that ought reasonably to have happened fifteen days from the initial report by the sending bank, in the absence of any factors that would have delayed the process. HSBC accepts there were no reasons it needed to delay in this case. That means the funds should have been returned by 16 November 2022. HSBC didn't return the money until 28 July 2023.

So, I do find HSBC was at fault here. Had it acted in line with the Best Practice Standards, Mr J would have been refunded significantly sooner than he was. To reflect the time Mr J was thereby deprived of the use of these funds I think it is fair and reasonable to require HSBC to pay Mr J interest on the sum returned at the rate of 8% simple per year. That interest should apply from the date the funds ought to have been returned (16 November 2022) until the date the funds actually were returned to Mr J's bank (28 July 2023).

Mr J has queried how the recovered funds were distributed between his personal account and the limited company account. This isn't a matter of discretion for the banks though, they are required to assign the recovered funds based on the sequence of payments received into the beneficiary account. That means I couldn't find HSBC at fault for not asking where Mr J or the limited company would have liked the funds to have been distributed.

Putting things right

I uphold this complaint in part and require HSBC UK Bank Plc to:

- Pay Mr J interest on the sum of £25,000, calculated at the rate of 8% simple per annum for the period from 16 November 2022 to 28 July 2023.

If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he may reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I uphold this complaint in part and require HSBC UK Bank Plc to put matters right as I have explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 18 April 2025.

Stephen Dickie
Ombudsman