

The complaint

E, a limited company, complains that HSBC UK Bank Plc (“HSBC”) hasn’t protected it from losing money it paid to one of HSBC’s customers as a result of fraud.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, E has explained that in November 2022 it made a payment of £30,000 from its account held with a third-party payment institution to an account held with HSBC as a result of a scam.

E subsequently complained to HSBC. Ultimately, HSBC and E couldn’t reach agreement about things, so E referred its complaint about HSBC to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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.

Having done so, I’ve decided to not uphold this complaint for materially the same reasons as explained by our Investigator.

I’m sorry if E was scammed – in this case E ultimately has suffered its loss because of fraudsters. I can’t reasonably ask HSBC to reimburse losses that resulted from the criminal actions of third parties unless its acts or omissions unfairly resulted in E’s loss. So what I have to decide is whether or not HSBC reasonably did enough to prevent, or respond to, the alleged authorised push payment (APP) fraud.

HSBC has shared relevant information with this service in confidence to allow us to discharge our investigatory functions and has provided that which is necessary for the determination of this complaint. But I’m also limited to how much of this I can share for the same reasons as HSBC. But I’d like to assure E I’ve carefully reviewed everything before reaching my decision.

I appreciate E may feel HSBC should refund its loss as it allowed fraudsters to open and operate an account. But an account later found to have been utilised to misappropriate funds doesn’t automatically entitle the payer (victim) to a refund nor does it mean that the recipient bank unreasonably failed to prevent the loss. What I need to consider is whether at the time of opening the account HSBC ought reasonably to have known that the account being opened would later be used fraudulently. And in the circumstances of this complaint, I’m satisfied there wouldn’t have been anything at the time that I think reasonably could’ve alerted HSBC that the account it was opening would later be used to misappropriate funds. So I’m satisfied it didn’t miss an opportunity to prevent the fraud when opening the account.

I’ve also considered whether there was anything prior to when E’s funds were spent from the recipient account (and therefore no longer available for recovery) that ought to have alerted

HSBC to the possibility of fraud. But I'm satisfied from what I've seen that HSBC was monitoring the account and that there wasn't anything of concern such that I could fairly say HSBC unreasonably missed an opportunity to prevent E's loss here either.

I'm also satisfied having seen the account statements that by the time HSBC was told E's payment had been made as the result of fraud, there weren't any available funds for HSBC to recover.

I understand E will be disappointed, and I've taken on board everything it's said. However, for the reasons I've explained, I don't think HSBC unreasonably missed an opportunity either to prevent the alleged fraud or to have recovered the funds. So I don't uphold this complaint.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 6 January 2025.

Neil Bridge
Ombudsman