

The complaint

T, a limited company, complains that HSBC UK Bank Plc ("HSBC") have failed to refund the money it lost as part of a scam.

T's complaint is being brought by Mr N a director of T. T also has a representative, but for ease of reading, I will mainly just refer to T and Mr N.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr N a director of T was contacted by a scammer who claimed to be a representative from a bank that I will call D. He said that he would need to send funds from his personal account from D to a safe account to safeguard his funds. The scammer said that he would also receive a call from a representative of HSBC which held Mr N's business account as both his account with D and HSBC were compromised.

The scammer persuaded Mr N to open an account with a company that I will call C and he subsequently transferred £300,000 in two payments from his business account with HSBC to his account with C. The funds were then transferred to a number of accounts with C held by other parties.

My understanding is that Mr N also tried to attempt to transfer funds from his account with D to the scammer, but D prevented the payments.

Mr N eventually realised he had been scammed. Mr N, on behalf of T, asked HSBC to refund these payments as he believes HSBC should have done more to prevent him from being scammed. HSBC did not agree with this.

One of our investigators looked into this matter and he thought that any warnings or interventions from HSBC would not have stopped the scam.

Mr N, on behalf of T, did not agree with this and therefore his complaint has been passed to me to issue a decision.

I note that a different director of T has raised concerns relating to his removal from the HSBC account. My understanding is that this is being dealt with separately so I will not address this as part of this 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.

It isn't in dispute that Mr N authorised the disputed payments he made from T's HSBC account. The payments were requested by him using his legitimate security credentials provided by HSBC. And the starting position is that HSBC ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I've considered whether HSBC should have done more to prevent T from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

In this instance, both payments were made in branch separated by a few hours. Testimony from the staff involved said that they asked Mr N about the purpose of the payments, whether he had control of the account he was sending the funds to and if anyone had asked him to make the payments in question. The answers the staff member says Mr N gave were that he was transferring funds to an account with a higher interest rate; he did have control of the account in question; and he had not been asked to make a payment. I note that this evidence is not from the time of the transfers and is from the recollections of the staff member. I note though that Mr N has not denied that he gave these answers and in fact said that he was told to say this by the scammer, so I think the member of staff's recollections of the conversation are likely to be accurate.

So, overall, I am satisfied that Mr N was prepared to give misleading information to the member of staff when they had checked the payments were not related to a scam. So I don't think it's likely that, had HSBC intervened further, Mr N would have been forthcoming about what he was doing. So in the circumstances I don't think it's likely that HSBC would've been able to prevent the scam from occurring, even if it had probed further. I note the comments from T's representative in relation to the banking protocol. But given the answers provided by Mr N to the questions asked, and given that the money was going to an account in his own name (which I understand he demonstrated he controlled) and due to him saying that nobody had asked him to make the payments, I think, albeit on balance, that HSBC were not required to invoke the banking protocol, given the overall circumstances of this complaint.

So I think that HSBC intervened appropriately during the two payments. And, even had it asked further questions, I don't think that the scam would have been stopped. So I don't think that HSBC needs to refund the transactions in question.

I have thought about whether HSBC could have recovered funds via other means. I think that the Contingent Reimbursement Model (CRM) likely applies in this instance. As whilst the funds were being transferred from an account controlled by the same individual, the account holders are different legal entities. That said, I do not think that I could say that HSBC failed to give an effective warning as it was prevented from doing so due to the misleading information Mr N gave when asked about the purpose of the payments. So I don't think that HSBC should refund T under the CRM. I also don't think the funds could have been recovered via other means, as the money had already been moved from the recipient account of the transfers, prior to this being reported as a scam to HSBC.

Finally, T's representative has raised concerns that Mr N should not have been able to make the withdrawal in question due to limits on the account. HSBC have confirmed that there were no withdrawal limits in branch for transfers and I can't see anything in the terms and conditions of the account that suggest the transfers should not have been allowed therefore overall I don't think that HSBC did anything wrong by allowing the transfers.

Taking everything into consideration, I'm not persuaded that HSBC can fairly or reasonably be held liable for his loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or

reject my decision before 26 June 2024.

Charlie Newton
Ombudsman