

The complaint

L complain that HSBC UK Bank Plc (“HSBC”) failed to prevent fraudulent payments from leaving their account.

What happened

L employed an accountant to manage their financial arrangements, including the operation of their accounts. I’ll refer to the accountant as B.

L arranged for B to be the nominated person for their HSBC accounts, which included registering B’s mobile phone with the bank as part of the account opening process.

B were responsible for day-to-day operation of the account and were authorised (by L) to make payments from it, including through the use of an internet banking facility.

In 2023, L moved their accounts to another bank and shortly after opening it, they were advised there were issues with the nominated person (B). It was found that certain payments had been questioned by the new bank and it later transpired that B was suspected of making payments that weren’t in line with the financial arrangement.

L approached HSBC and asked them to review the account in light of what had happened with the new bank. It was later found that over £100,000 had been transferred out of the account by B. These transactions had been disguised as legitimate payments but appeared to have been transferred to other accounts controlled by B.

L sought a refund from HSBC based on the misappropriation of their funds by B, including L’s belief that HSBC had failed to spot the fraudulent payments. The police were also advised of the matter.

HSBC declined to make any refund, asserting that as B was an authorised signatory on the account, they were acting on legitimate instructions.

L made a complaint about HSBC’s decision. Their decision remained unchanged, and they reiterated their position that B was empowered and authorised to act on L’s behalf. It was recognised that B had obscured the destination of the funds, but the payment was still authorised, and HSBC sent them as instructed.

L remained unhappy with HSBC’s decision and brought their complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the matter and after reviewing the evidence, recommended that the complaint not be upheld.

It was commented that because B had sole access to the account as the authorised signatory, they were the proper person to make payments from the account. The transactions made by B were therefore authorised.

It was noted that it was B’s own phone number recorded on the account, so any enquiries made by HSBC would be directed only to B.

L disagreed with the investigator's outcome. They commented that the outcome was a decision on policy, and they weren't disputing policy. Their main issue was that HSBC mis-managed their funds by not identifying the payment to B's private account.

As no agreement could be reached, L's complaint has now 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.

L have argued here that the investigator's (and HSBC's) outcome is related to policy. They went on to say they weren't disputing that policy. So, I just wanted to set out the position regarding authorisations.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 (PSRs). The basic position is that HSBC can hold L liable for the disputed payments if the evidence suggests that it's more likely than not that they made them or authorised them. There's no disagreement here that the payments disputed by L were made by their nominated representative (B) who was authorised to operate the account on behalf of L.

Banks are required to follow the payment instructions of the nominated person who operates the account (here that was B). So, as far as the payments that L have disputed, they are considered authorised for the purposes of the PSRs.

But, that is not the end of the story:

- the law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty'); and
- regulated firms like HSBC are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).

Also, as a matter of good industry practice, I consider firms should in any event have taken proactive steps to :

- look to identify and help prevent transactions - particularly unusual or out of character transactions – that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 '*Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice*', which a number of banks and trade associations were involved in the development of).

This means that there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment. Or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

I've no doubt here that finding out what had happened was a shock to L, but as far as their complaint to HSBC is concerned, I have to consider the arrangement entered into by both parties. I've reviewed the account opening documents and it's apparent that B was given the authority to operate the account on behalf of L. That's clearly a position of trust and it's very unfortunate that this appears to have been abused by B. But, I'm only able to assess the conduct of HSBC here and I don't think it was unreasonable for them to follow the instructions given to them by B as it was clear they were the ones operating the account.

I have considered if HSBC should have intervened because the payments were unusual or suspicious. But, having looked at the level of those payments, there's nothing that stands out that I'd expect them to consider was suspicious or cause them to make additional enquiries. If HSBC had any concerns about some of the accounts, they would most likely have contacted the authorised representative which was B who would have had, in the first instance, the opportunity to explain away those concerns. I do acknowledge that if HSBC had asked about the transactions – they could have also gone to L, but given that I don't think there was reason for them to be suspicious, I don't think it would be fair to hold HSBC accountable for not approaching L.

L complained that, in their view, HSBC failed to spot the false details used by B when setting up the accounts. A number of payees were set up by B themselves using their internet banking facility. B appears to have entered details for the payees that would later show up on L's legitimate statements as genuine payees (for example HMRC). Presumably this was to ensure that when L reviewed the statements, they wouldn't notice anything unusual.

Confirmation of Payee (CoP) was introduced by HSBC (and other major banks) to reduce the likelihood of its customers from getting scammed and to prevent the payment of funds to the wrong account. B opened some accounts prior to this introduction (which would be unlikely to be checked retrospectively) and some accounts after the implementation of CoP. The system checked the details entered (by B) and provided a message back to them about those details they'd entered to set up new payees.

That message told B that the details of the account didn't match, so they should check with the beneficiary bank. Here, it appears that the CoP warnings were ignored by B (for obvious reasons) and chose to make the payment anyway. It's unlikely that HSBC were aware of who the account holder (at the beneficiary bank) was, just that it didn't match. So, I don't think it was unreasonable that HSBC didn't pick up on this because they were likely unaware of who the funds were actually going to. Given that there were no other aspects to the payments that I think HSBC ought to have been concerned about, I can't fairly expect them to have intervened.

Whilst I have much sympathy for L as they've lost a considerable amount of funds, I'm unable to find that HSBC treated them unfairly or should have intervened. As the payments were made by their authorised representative, I won't be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 28 November 2024.

David Perry
Ombudsman