

The complaint

A company, which I'll refer to as W, complains that HSBC UK Bank Plc won't reimburse it after it lost money to a scam.

Ms P, who is the director of W, brings the complaint on W's behalf via a professional representative. For ease of reading, I'll refer to all submissions as being made by Ms P directly throughout this decision

What happened

The background to this complaint is well known to both parties and has already been covered in detail in our investigator's view, so I won't repeat it in detail here. But briefly, Ms P has explained that during the Covid-19 pandemic, she was experiencing loneliness and therefore joined an online dating site.

Ms P matched with somebody living abroad and they began speaking every day, both by telephone and instant messaging for around 12 months. Unfortunately, unknown to Ms P at the time, this individual was in fact a fraudster.

The fraudster then told Ms P that he was struggling financially and having difficulty as a result looking after his children. As Ms P has explained she was in love with this individual, she panicked and agreed to send him money. She tried to make a payment via one of her accounts, but as the account details she'd been provided with were incorrect, the payment was unsuccessful. The fraudster then gave Ms P a second set of account details that he said was for his aunt. Ms P made a payment of £6,170.16 from her business account with W in branch. When asked the payment purpose, she told the branch staff it was for a holiday deposit, as the fraudster had advised her to do.

Ms P continued speaking with the fraudster after this payment. However, during one call she noticed office background noises, that the fraudster explained as being television noise. Becoming suspicious, Ms P told her daughter what had happened. Her daughter conducted research on images the fraudster had sent Ms P, and found they were of an international politician. At this point, Ms P realised she'd fallen victim to a scam and made a claim to HSBC.

HSBC considered Ms P's claim but didn't uphold it. It said Ms P authorised the payment and it followed its legal obligation to process it. However, HSBC acknowledged that it didn't initially raise Ms P's claim correctly, and therefore offered Ms P £150 by way of an apology.

Ms P remained unhappy and referred her complaint to our service. An investigator considered the complaint but didn't uphold it. She said that the payment was made from an account in the name of W, but as the payment wasn't for business purposes the business hadn't suffered a loss. In any event, she didn't think HSBC had acted unfairly in processing this payment. She didn't consider a one-off payment ought to have raised concern to HSBC when told it was for a holiday deposit and doesn't think Ms P would've been honest with HSBC had it asked further questions.

Ms P disagreed with the investigator's view. She said that the funds lost were not business funds. As the account had insufficient funds when the request by the fraudster was made, she said she borrowed these funds from her daughter.

She also thought that whether further intervention from HSBC during the payment would have been effective is a hypothetical question that unfairly impacts her. She also thought there were key hallmarks here of a scam, such as her having met the fraudster on a dating site, never having met face to face and it being clear from the recipient account that she was not booking a holiday.

As Ms P disagreed with the investigator's view, the complaint has been passed to me for a final decision.

What I've decided – and why

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Having done so, while I'm sorry to disappoint Ms P, I'm not upholding her complaint. I appreciate this isn't the outcome she was hoping for, but I've explained my reasons for reaching this outcome below. However, I do agree with the compensation offered by HSBC in its file to our service and am therefore directing this to be paid, if HSBC hasn't already done so.

In broad terms, the starting position at law is that firms are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

The Contingent Reimbursement Model (CRM) Code can provide additional protection for the victims of APP scams such as this was. However, payments made to accounts outside of the UK are not within the scope of the CRM Code. So I cannot fairly apply the terms of the CRM code to the payment Ms P has made.

However, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that HSBC should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

It isn't in dispute that Ms P has fallen victim to a cruel scam here - but I've thought about whether HSBC ought to have done more, prior to processing this payment.

Ms P was making the payment in branch, so I think it's fair to say there was a greater opportunity for HSBC to easily question the payment and ensure Ms P wasn't at risk of financial harm from fraud. However, I'd still consider any questioning to be proportionate, based on the risk level identified. In this case, there were some things about the payment that ought to have carried higher concern. Ms P's business account was already overdrawn, and she was then requesting to make a large payment that would take her further into her overdraft. The payment was also being made internationally which wasn't typical for the account. Ms P has also said the payment was for a holiday, which is, of course, unlikely to be a business purpose.

However, at the same time, there were regular large payments from this account, exceeding the value of this payment, although these were largely card payments. Additionally, as the payment was from a business account, I think it's less unusual to see one-off larger payments being made.

Therefore considering the payment's appearance overall, I think there were some flags that warranted questioning from HSBC, but I don't think it appeared so unusual that without concerning answers being provided by Ms P, HSBC should have applied in-depth probing.

When asked what the payment was for, Ms P said she was paying a friend for a holiday deposit and HSBC's notes from the branch at the time suggest Ms P showed HSBC screenshots on her phone of the account details that she said belonged to her friend.

As the payment happened several years ago, no further information has been provided by HSBC about what happened in branch, so I can't say with certainty if HSBC asked further questions about the payment. However, even if it had, I'm aware Ms P had been told by the fraudster, who she was in love with at the time, to not be honest with her bank about the payment purpose. And I don't think the payment purpose provided of a holiday deposit is one that would be difficult to lie about if probed proportionately further on why she was paying a friend instead of a travel agency, or if staff had asked further details about the holiday. Ms P had also tried to make the payment once already and had been unsuccessful with another banking provider, based on the account details appearing to be incorrect – so even if this payment was unsuccessful, I think Ms P would likely have found a way to make the payment.

Ms P has set out what she considers are key hallmarks here that she was falling victim to a scam and I don't disagree with these. However, in order for this to be relevant here in whether HSBC could have stopped the scam, I need to be satisfied that, if questioned, Ms P would've provided this information. Based on the available evidence, I don't think it's reasonable to determine that, even with further proportionate questioning, HSBC could have uncovered here that Ms P was the victim of a romance scam. I therefore don't think HSBC could have reasonably been expected to prevent this scam from happening.

In addition to this, while Ms P has said she borrowed funds from her daughter to pay the fraudster, I can see no evidence of this on her statement. As already referenced, Ms P was in her overdraft when this payment was made, and the scam payment pushed her further into her overdraft. I can see no credits from accounts that could be her daughter's – and credits from Ms P's other personal accounts all appear to be for a set purpose to cover linked business costs. Therefore, I also don't think it would be fair or reasonable for HSBC to reimburse this loss to W, when it wasn't W - but Ms P - that appears to have suffered the loss here.

Overall, for the reasons explained, while I'm sorry to disappoint Ms P and don't underestimate the impact this scam would have had on her, I don't think HSBC can be held liable for her losses and I therefore don't require HSBC to reimburse her.

Compensation offer

HSBC has acknowledged it didn't initially raise W's claim correctly and offered £150 in its file to our service as an apology. I think this is a fair offer of compensation, based on the inconvenience this would have caused.

My final decision

My final decision is that I uphold W's complaint in part against HSBC UK Bank Plc. I direct HSBC to pay £150 in compensation to W.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 8 April 2025.

Kirsty Upton
Ombudsman