

## The complaint

A limited company, O, complains that HSBC UK Bank Plc (as the recipient bank) didn't do enough to prevent the loss it suffered when it sent payments as the result of a scam.

Mr G (one of O's directors) has brought the complaint on its behalf and has used a representative when doing so. However, for ease of reading, I'll mostly refer to Mr G, where I mean him, his company, or the representative.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Between 12 and 15 May 2023 Mr G made a series of payments from O's account with its own bank which is based outside the UK. The payments totalled around £266,000. The payments all arrived in an account held with HSBC in the UK.

At the time Mr G believed he was settling valid invoices from one of his existing suppliers. He'd recently received an email informing him that the supplier had changed their bank account and provided new details to be used. Mr G later learned that the email had come from a scammer who used an email address that was very similar to that of his existing supplier. Mr G reported this to his own bank who in turn informed HSBC. HSBC recovered and returned around £100, which still left Mr G at a considerable loss.

In July 2023 Mr G complained to HSBC. He didn't think they'd done enough to prevent the loss. Ultimately HSBC didn't offer any redress and the complaint was considered by one of our Investigators. She thought HSBC ought to have done more and recommended that they pay Mr G around £266,000 plus 8% simple interest. Mr G accepted this outcome, but HSBC didn't. They asked for an Ombudsman to review the complaint.

In December 2024 I issued a provisional decision in which I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*As the outcome I'm reaching is slightly different to that of our Investigator, I'm issuing this provisional decision to give both sides a further opportunity to comment before my decision is finalised.*

*I'm satisfied that HSBC followed their processes when opening the account that later received funds from Mr G. I don't think they reasonably could have known at that time that the account they were opening would later go on to be used in connection with a fraud or scam. So I don't think HSBC could have prevented Mr G's loss in relation to the opening of the account.*

*HSBC have also confirmed that the first report of fraud / scam they received was from Mr G's bank. So again, there wasn't a failure to act to an earlier report or similar which might have impacted the loss suffered.*

*Being a victim of a scam doesn't automatically entitle Mr G to reimbursement from HSBC. In circumstances such as these, where HSBC (in relation to the matter being complained about) do not have a contractual relationship with Mr G, it wouldn't be fair to ask that they reimburse his losses unless it could fairly and reasonably be concluded that their act(s) and/or omission(s) would've made a material difference to the prevention of all or part of the losses. In simpler terms for me to fairly uphold this complaint, I'd need to be persuaded that there was a failure that took place, and but for that failure Mr G's loss or a part of it would have been prevented.*

*HSBC should monitor the accounts they provide for a variety of reasons which include looking to prevent fraud and scams where this is possible. So, I've gone on to think about the activity on the account. When the first of Mr G's payments arrived, the account had been open for a number of years. And in the months prior to Mr G's payments, there was typically only a few hundred pounds moving through the account each month. On the same day that Mr G's initial payments arrived, the accountholder instructed an outgoing payment for over £40,000. This represented a significant change to how the account had previously operated. In the previous year there hadn't been any payments or withdrawals for over £1,000. And given the outgoing payment was for such a large amount of money, I'd have expected HSBC to have intervened before processing it.*

*I appreciate that the use of any account can change over time, or that particular circumstances can mean one off or irregular activity. But equally it can be an indication that there is potentially something amiss. And given how out of character this account activity was, alongside HSBC's obligations to try to prevent their accounts being utilised to misappropriate funds, I don't think it's unreasonable to have expected HSBC to have carried out some due diligence before allowing the funds to be paid away. HSBC then would've seen (from the information transmitted alongside each payment) that their accountholder may not have been the intended recipient for Mr G's payments. I say this as the evidence from Mr G's payment receipts (and the updated payment instructions the scammer provided) show that the intended recipient was still his genuine supplier (and not the named HSBC accountholder). This should have further heightened their concerns for the potential of an email interception scam (a common scam that HSBC would've been well aware of at this time).*

*I'd have expected HSBC to have contacted their customer to seek further information about both the outgoing and incoming payments. Their customer had declared an anticipated turnover of around £210,000 per year. But had never achieved close to this in the preceding years. They had also previously told HSBC that they didn't intend to trade internationally. And in this situation, I don't think it's unreasonable to expect HSBC to have asked their customer for evidence of their proof of entitlement to the funds Mr G had sent. I'd also have expected them to have prevented Mr G's funds from leaving the account whilst they were investigating.*

*And given HSBC first received notification about the scam from Mr G's bank only days later, I don't think it's likely that the HSBC accountholder could have provided plausible proof of entitlement within that timescale. It's therefore most likely that all of Mr G's funds (including those sent on 15 May) would have remained in the account available for recovery.*

*The limited funds that were recovered and returned, were sent back on 7 July 2023. In the circumstances of this complaint, I don't think this was an unreasonable timeframe for HSBC to arrange the return of funds (following receipt of an indemnity from Mr G's bank). But I do think if they'd done all they should have, that all of Mr G's loss was preventable and that it all would've been returned on that date. Mr G has said that he had to make additional payments to his supplier due to the payments that went to the HSBC account as a result of the scam.*

*And that these payments took place between August and October 2023. As these were international payments, there will also likely have been some fluctuation in the exchange rates between the currencies involved. Some of this may have worked to Mr G's advantage, and some to his disadvantage. It's also very difficult with so many payments to calculate the exact point at which Mr G was without funds he otherwise would have had.*

*It's more likely than not that had HSBC done all I'd expect, the full funds would have been returned on the same date as the £100 that was recovered (that being 7 July 2023). But as Mr G always would have had to pay his supplier, he wasn't without the use of that money until he later settled the outstanding invoices. In the specific circumstances of this complaint, in line with the requirement for me to resolve a complaint with minimal formality, I think the fair and reasonable approach to take would be to also award 8% simple interest (yearly) on my intended award, but to do so from the mid-point of when Mr G settled the invoices, that being around 15 September 2023. And whilst not being 100% precise, I think this is a fair and reasonable approach to cover both any fluctuations in currency exchange rates and to compensate Mr G for being without funds he otherwise would have had the use of. I've thought carefully about whether it would be fair and reasonable for me to make a reduction in my intended award as a result of contributory negligence. HSBC have made the following points:*

- They say the payments are structured in such a way that each one appears to have been paid against an individual invoice, rather than a single large payment that has been subject to a diversion scam. HSBC believe this is unusual from an accounting perspective.*
- HSBC say the payment was evidently going to an account in the UK (through the details on the IBAN) when the intended recipient was based elsewhere, they believe this is something that should've been identified. HSBC also think the same applies to the different email address used by the scammer, which Mr G also should have seen.*
- HSBC have questioned how the scammer knew Mr G was behind on his payments and they believe this (and certain other factors) suggests the potential for internal fraud.*
- They question whether Mr G has recovered his loss (or would be able to) from his sending bank.*

*I've considered everything HSBC has said, but in the circumstances here, I'm not persuaded that a reduction in award would be appropriate. The difference in the email address used was very subtle, and I can't say it's unreasonable that this wasn't noticed. The same applies to the IBAN that was paid. I don't think it's so implausible for an international business to have accounts in different countries such that a reduction should be made due to Mr G not noticing or confirming this at the time. Mr G has also said that his business involves goods being shipped from his supplier directly to customers. And that invoices are settled when he receives payment from each customer. Again, I don't think how Mr G chooses to raise his invoices and settle his accounts means there is negligence here. He's also said that his company's normal process was followed when making the payments and that there wasn't any intervention or warnings provided by his bank. I've also not seen any evidence to persuade me that Mr G hasn't been a victim of a scam as he states. So overall, I don't think there is a fair and reasonable basis for me to make a reduction here due to contributory negligence.*

*And whilst I understand why HSBC would want to question whether Mr G had already been reimbursed, he has recently confirmed that he hasn't recovered any of his loss from his own bank (or any other source). I can only consider the complaint referred to me (I'm unable to comment on the actions of Mr G's own bank). I have no reason to doubt Mr G's testimony*

*and no evidence to support that all or part of his outstanding loss has already been refunded. Ultimately, based on the information available to me I'm satisfied the loss is outstanding. If HSBC has any information or evidence to suggest otherwise, I'd be happy to consider it in response to this provisional decision. Overall, I think that but for HSBC's failures as referenced above, Mr G wouldn't have suffered the loss he did. So, in these circumstances, I think it is fair and reasonable for that loss to be reimbursed.*

*My provisional decision*

*For the reasons outlined above, but subject to any further information I receive from either Mr G on behalf of O, or from HSBC, I intend to uphold this complaint.*

*I intend to direct HSBC UK Bank Plc to pay O the total of the amount they paid into the HSBC account (less any amounts already recovered and returned). This should be structured in such a way to adjust for the currency exchange rates. This is so that O receives the same amount of euros that it would have received had the funds been sent back on 7 July 2023 (when the other recovered funds were returned).*

*8% simple interest should also be added to this amount to be calculated between 15 September 2023 and the date of settlement.*

*If HSBC deducts tax from the interest award, it should also provide O with evidence and an explanation of what has been deducted, so it can be claimed back if it is appropriate to do so."*

Mr G responded to say he accepted my provisional decision, he also provided further evidence with regard to whether he'd received any reimbursement from his own bank. HSBC didn't agree with my provisional decision. Part of their submissions focussed on the jurisdiction of the Financial Ombudsman Service. Since then I've issued a jurisdiction decision dealing with this issue. So I can now go on to consider the other points raised.

### **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.

HSBC's response didn't further argue their case in respect of their own actions as set out above in my provisional decision. Rather, they believe they shouldn't be responsible to make any payment due to Mr G having been grossly negligent. They've also said that they are concerned about the possibility of fraud on behalf of O or one of its employees.

I've considered all HSBC has said in this regard, but no objective evidence has been provided to support the allegations they have suggested against Mr G. HSBC's concerns centre around:

- Mr G was intending to pay a German supplier but the IBAN wasn't DE but GB. Based on the website of the supplier, it's not clear they have a UK presence.
- There was a spelling difference in the email from the 3<sup>rd</sup> party compared to the usual email.
- HSBC say the sender of the email knew that the complainant was behind on their payments which suggests the fraudster had intimate knowledge of both the complainant and its suppliers arrangements (indicating insider fraud).

- Mr G applied the new account details to previously received invoices rather than requesting them to be reissued from the original source or cross checking the change with either the relationship manager or the credit management team of the supplier.
- There were 24 Payments on 2 days (over a 4 day period). During which time Mr G was in contact with the supplier and he did not check to see that any of the payments had been successfully received, despite being provided with new account details at the same time the invoice was received.

I specifically covered many of these points in my provisional decision. So I won't repeat those again here. It's most likely that either Mr G's or his suppliers emails had been compromised to enable a scam of this nature. And so knowledge of the payment history between O and its supplier, doesn't persuade me that Mr G or one of his employees has acted dishonestly as alleged.

HSBC also provided two internet links for my consideration. They seemed to imply that Mr G's home country has a reimbursement scheme for victims of scams and they question why this hasn't been used / considered. One of the links provided goes to an article about the psychological impact of scams, and includes reference to a victim of a scam whose bank *"refunded the money within 24 hours because the incident was an unauthorized fraud executed by the scammer, not [the victim] herself."* The other link references a court decision in Mr G's country. But again, that is in relation to an 'unauthorised' payment (which is the same as what the article suggests).

I've considered these points, but it seems the refunds HSBC have flagged were on the basis of unauthorised transactions (albeit in one where the victim was tricked into sharing details), not as is the case for Mr G who has been a victim of *authorised* push payment fraud having made the payments himself after being tricked into doing so. My own research online hasn't indicated that there is a compulsory reimbursement scheme in relation to authorised push payment scams which would be available to Mr G. And he's provided further evidence to support that his own bank had concluded there was no basis for compensation and had closed its case. Overall, in the absence of further documentary evidence beyond HSBC's suggestion, I'm not persuaded that Mr G has recovered his loss elsewhere and that he would therefore unfairly benefit from my proposed award to the detriment of HSBC.

HSBC also said they did not understand why 8% 'punitive' interest is being applied. My interest award isn't punitive as it isn't intended to 'punish' HSBC. As set out in my provisional decision the interest award is in line with our established approach that HSBC should already be aware of and is to *"compensate Mr G for being without funds he otherwise would have had the use of"* if HSBC had done all I'd expected in the circumstances of this complaint.

It is always easier in hindsight to point out things the 'could' have been done differently at the time. But I'm not persuaded that any of Mr G's actions can be described as negligent to the extent that it would be fair to make a reduction in award in the circumstances of this complaint. Or that there is sufficient evidence to persuade me that this isn't a genuine claim or that Mr G has already recovered the losses he is claiming from HSBC. Due to this nothing further HSBC have said persuades me that I should deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint.

HSBC UK Bank Plc must pay O the total of the amount it paid into the HSBC account (less any amounts already recovered and returned).

This should be structured in such a way to adjust for the currency exchange rates. This is so that O receives the same amount of euros that it would have received had the funds been sent back on 7 July 2023 (when the other recovered funds were returned).

8% simple interest should also be added to this amount to be calculated between 15 September 2023 and the date of settlement.

If HSBC deducts tax from the interest award, it should also provide O with evidence and an explanation of what has been deducted, so it can be claimed back if it is appropriate to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 10 March 2025.

Richard Annandale  
**Ombudsman**