

## **The complaint**

Mr B is complaining about HSBC UK Bank Plc because it declined to refund money he lost as a result of fraud. He's also dissatisfied with the way his claim was handled when he notified it of the fraud and how it's dealt with him in respect of the outstanding debt on his credit card.

## **What happened**

On 19 October 2023, Mr B received a message from someone claiming to be his daughter asking to borrow money. The scammer provided a link to a payment service to facilitate the payment and Mr B made a payment worth £800 using his HSBC credit card. The scammer then asked for more money but fortunately Mr B realised what was going on and no further payments were made.

While HSBC refused Mr B's claim for a refund, it did apologise for the way it had handled his claim and credited £150 to his account by way of an apology.

Our investigator didn't recommend the complaint be upheld. He didn't think HSBC should have identified the payment as potentially fraudulent before processing it. While he did recognise some failings in HSBC's response, he felt the £150 compensation it had already paid was appropriate in the circumstances.

Mr B didn't accept the investigator's assessment. He says that he contacted HSBC very shortly after he instructed the payment and that it therefore missed the opportunity to stop it. He says he was told on the phone by HSBC that it would be able to sort things out but this didn't happen. He also wanted to know if we'd asked the payment service about its role in facilitating this criminal activity.

The complaint has now been referred to me for review.

## **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 reached the same overall conclusions as the investigator, and for broadly the same reasons. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

In broad terms, the starting position at law is that a bank such as HSBC is expected to process payments a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, '*authorised*' essentially means the customer gave the business an instruction to make a

payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.

In this case, there's no dispute that Mr B authorised the above payment.

There are, however, some situations where we believe a business, taking into account relevant rules, codes and best practice standards, shouldn't have taken its customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

HSBC also has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customers' accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr B.

### *The payment*

Having considered what HSBC knew about the payment at the time it received the payment instruction, I'm not persuaded it ought to have been concerned about this. This was an isolated payment and the amount wasn't particularly high for a credit card payment – credit cards are often used for larger single purchases – and it went to a legitimate payment service.

I must take into account that many similar payment instructions received by HSBC will be entirely legitimate. And based on the circumstances of this payment, I don't think there were sufficient grounds for it to think that Mr B was at risk of harm from fraud when he made the payment and I can't reasonably say it was at fault for processing it in line with his instructions.

I understand Mr B contacted HSBC shortly after he instructed the payment but unfortunately, as our investigator has explained, it was already too late to stop it at this point.

### *Recovery of funds*

I've also looked at whether HSBC could or should have done more to try and recover Mr B's losses once it was aware the payment was the result of fraud.

The chargeback scheme and Section 75 claims are possible routes to recovering credit card payments and I think it's likely this is what HSBC's agent was referring to on the telephone when Mr B says they implied things could be sorted out. Unfortunately, these options don't apply in all circumstances.

A chargeback isn't guaranteed to result in a refund, there needs to be a right to a chargeback under the scheme rules. Unfortunately, the chargeback rules don't cover scams.

We'd only expect HSBC to have raised a chargeback claim if it was likely to be successful and it doesn't appear that would have been the case here. Mr B paid a legitimate payment service and it paid that money onto the scammer as requested. Mr B's disagreement is with the scammer, not the payment service and it wouldn't have been possible for HSBC to process a chargeback claim against the scammer as he didn't pay them directly. And there'd be no claim against the payment service as it provided the service it was meant to.

For similar reasons, Mr B wouldn't be liable for a refund under Section 75 either. So, in the circumstances, I don't think anything that HSBC could have done differently would have led to this payment being successfully recovered.

### *Other issues*

Mr B has also expressed potential concerns about the role of the payment service in facilitating the scam. But this complaint is about HSBC and it's not appropriate for me to comment on the actions of another business here. If Mr B has concerns about the payment service, he should address them to that business in the first instance.

It also appears Mr B stopped making payments to his credit card following this incident and that this has impacted his credit file. I fully understand why he might not think he should have to pay back this money, but the fact is that it was a payment he authorised and HSBC is entitled to try and recover it. HSBC has a responsibility to accurately report the status of accounts, including missed payments, to the credit reference agencies and it's also entitled to take steps to try and recover any outstanding debt if payments are missed.

To avoid any further impact on his credit file, I'd encourage Mr B to contact HSBC about how he can make up any outstanding payments. If it's the case that he can't make up those payments due to financial hardship, he should explain this to HSBC and I'd expect it to deal with his situation positively and sympathetically.

Finally, I can see this whole episode has caused Mr B a great amount of distress and inconvenience. I'm conscious that most of this should be attributed to the actions of the scammer. But it's clear there were shortcomings in the way HSBC dealt with his claim that, among other things, resulted in some confusion and unnecessary delay. This would only have compounded the situation and I believe Mr B should be compensated for HSBC's failings.

The amount to award for a consumer's distress and inconvenience can be difficult to assess as the same situation can impact different people in different ways. But in the circumstances of this case, I think HSBC's decision to pay £150 for its part was fair and reasonable.

### *In conclusion*

I want to be clear that it's not my intention to suggest Mr B is to blame for what happened in any way. He fell victim to a sophisticated scam that was carefully designed to deceive and manipulate its victims. I can understand why he acted in the way he did. But my role is to consider the actions of HSBC and, having done so, I'm not persuaded these were the cause of his losses.

I recognise Mr B has been the victim of a cruel scam and I'm sorry he lost this money. I realise the outcome of this complaint will come as a great disappointment but, for the reasons I've explained, I won't be telling HSBC to make any refund.

### **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 Mr B to accept or reject my decision before 19 March 2025.

James Biles

**Ombudsman**