

The complaint

A company which I'll call 'S' complains that HSBC UK Bank Plc behaved unreasonably when it returned a payment made to the company's account without warning.

The complaint is brought on S's behalf by its director, Mr S.

What happened

S holds a business current account with HSBC.

Mr S told us:

- On 30 December it took three payments from a customer totaling around £30,400. The payments credited S's account, so it released the goods to the customer.
- A short while later, he noticed that the payments had been debited from S's account and returned back to the customer, so he contacted the bank to find out what had happened.
- HSBC said there was no-one available to speak to him about the funds being returned. The bank also said that it was one of its customers who had gone into the local branch to transfer the funds and that it would investigate the issue. It subsequently said this was a civil matter and S would need to pursue the customer directly, but it wouldn't give any details.
- HSBC finally said S had been the victim of fraud and that S shouldn't have released the good until the funds had cleared. However, he had checked the funds had credited the account as per the transaction statement he'd provided to the bank.
- He didn't think it was possible for a bank transfer to be reversed and if the amount had been charged back, he felt HSBC should have contacted S first. So, he thought HSBC should return the funds which had been debited from S's account.

HSBC told us:

- It had fraud prevention policies and procedures in place to protect its customers, but it wouldn't have been able to identify fraud from the payments credited to S's account.
- S had chosen to release its goods when the payments had credited its account on 30 December 2023, however these weren't cleared funds, and the company would have been able to see this on the available balance of the account.
- It had recommended that S raise the matter with its customer and report the fraud to the police.

Our investigator recommended the complaint be upheld in part. She said that S's customer contacted HSBC to say that they hadn't made the transfers to the company, and therefore the bank had debited H's account accordingly. She also said that H had accepted payment for the goods by bank transfer which entailed more risk, and noted that the goods were released before the transfers had cleared. She thought that HSBC had caused H inconvenience as the bank hadn't told the company that the funds had been returned to its customer, or why this had happened. So, she thought the bank should pay S £150 compensation for the inconvenience caused. But she didn't think HSBC could have known that S had been the victim of fraud or been able to prevent it.

HSBC accepted the investigators view. S didn't accept the view and asked for an ombudsman to review its complaint. It said in summary that:

- The third payment had been made via bank transfer in the HSBC branch so surely the bank would have needed ID from its customer to make the payment. It had asked HSBC if its customer had made transactions and then denied it was them in the past, but the bank wouldn't provide any information.
- The action taken by its customer and HSBC felt like a chargeback and therefore surely the bank should have informed it that the customer had denied making the transfers so it could have defended itself.
- It hadn't been advised by HSBC that accepting bank transfers as a form of payment was risky and its statements had shown the funds had cleared before it released the goods. HSBC's own website says that once a bank transfer had been made the payment couldn't be recalled, so the bank should have contacted the company before it debited its account.

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'm sorry to disappoint Mr S, but having considered everything in this case, I can't fairly ask HSBC to refund S the payments which were debited from its account.

Mr S says that he believed in line with HSBC's terms that once a payment had been made by a bank transfer that the payment couldn't be recalled by the payee and that he believed accepting payment in this manner would be safe. I understand why Mr S is concerned about the actions taken by HSBC when it returned the transfers, but I'm not satisfied this term is applicable here. I say this because I've seen evidence from the bank that the individual who made the transfer payments to S wasn't actually the account holder. Therefore, because the genuine account holder hadn't given permission for those transfers to take place, in line with HSBC's fraud procedures, the payments were returned to the account holder. The terms and conditions of S's account say that HSBC can remove money from the account without asking if the bank suspects it was paid in by fraud, as was the case here. So, I don't think HSBC has behaved unreasonably by removing the funds from S's account when it did.

Mr S says that HSBC staff said the final payment had been made within a HSBC branch, and therefore the bank has contributed to S's loss. He also says that HSBC should have contacted S to make it aware that fraud had taken place and given the company time to respond to any enquiries before the funds were returned. However, I've seen that S took three payments on 30 December 2023, one for £9,820 at 12:51, one for £12,100 at 13:27 and one for £8,496.30 at 13:37 and that all of these were made as a bill payment via mobile banking. I haven't seen any evidence that these transactions were made in branch.

However, I can see that these payments were flagged as potentially fraudulent by HSBC shortly after they'd been made, so the bank quickly contacted the account holder by phone and text message to see if these payments were legitimate. I think it's reasonable that HSBC took action to contact the account holder first, rather than S as the payment recipient, because it was the account holder whose funds had been fraudulently debited. I also think it's fair that their funds were returned to the account as soon as the bank was satisfied that they hadn't undertaken these transactions. Furthermore, even if HSBC had contacted S as soon as it was able to get confirmation from the genuine account holder that the transactions were fraudulent, I don't think it would have made a difference here. I say that because S had already released the goods before the genuine account holder had spoken to the bank.

I recognise that Mr S said he checked S's account balance before releasing the goods to the fraudster, and therefore there has been an error by HSBC. However, the evidence provided by Mr S is the transaction history from the 30 December 2023 and therefore ought reasonably to have shown the payments crediting to S's account on the day in question as they were being processed through the banks system. In addition, Mr S hasn't provided evidence showing the cleared and uncleared balances and based on the evidence from both parties, I'm not persuaded that these payments were showing as cleared on S's account.

I understand that Mr S says that the individual who made the purchases did so face to face and held a HSBC account as they provided evidence of this. However, whilst I am unable to give Mr S further information about the account holder, based on the evidence I've seen, I'm satisfied that the genuine account holder wasn't responsible for the transactions made to S and was also a victim of fraud. And therefore, HSBC wasn't able to accept a defence or discuss the payments with S in the same way it likely would have if this had been a chargeback claim as the circumstances and rules are different.

I recognise that this has been a difficult time for Mr S and that he'll be disappointed with my decision. However, I don't think HSBC did anything wrong in debiting the payments from S's account, so I won't be asking it to refund these payments. That being said, I think HSBC should have contacted S once it was aware that the payments were fraudulent to let it know that the payments were being returned, rather than the company noticing itself several hours later. I also think the bank should have been clearer about what had happened with regards to the payments which had debited S's account when Mr S called it on 30 December 2023. Therefore, I think HSBC should pay S £150 compensation for the inconvenience caused.

My final decision

My final decision is that I uphold this complaint in part. I instruct HSBC UK Bank Plc to pay S £150 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 4 December 2024.

Jenny Lomax
Ombudsman