

The complaint

Mrs J is unhappy HSBC UK Bank Plc (“HSBC”), won’t reimburse her for the money she lost when she fell victim to a rental accommodation scam.

Mrs J has been represented in bringing her complaint – but for ease, I’ll refer to Mrs J throughout this decision.

What happened

The details and facts of this case are well-known to both parties, so I don’t need to repeat them at length here. Based on the submission of both parties, I understand them to be as follows.

In summary, on 25 April 2023, Mrs J used her HSBC credit card to make an international transfer (through an Electronic Money Institution (“EMI”) whom I’ll call “W”) for €3,650 (£3,263.13). This payment was for what she believed was genuine accommodation abroad in a country where Mrs J was intending to stay with her family for her holiday. Mrs J says she had found the accommodation on a well-known rental accommodation website but was told the payment for the accommodation had to be made directly.

Unfortunately it was a scam, and Mrs J had in fact paid money to a fraudster.

Mrs J, after discovering she had been the victim of a scam, contacted HSBC (and then subsequently W also), to report the matter and to see if it could recover her funds. Mrs J had concerns HSBC didn’t do enough to prevent her falling victim to fraud.

HSBC advised that it was unable to obtain reimbursement under Visa’s Rules and Regulations – because the retailer/merchant was W. And W had carried out the services by transferring the funds for Mrs J to the recipient. HSBC also considered that the transaction didn’t trigger on its fraud detection system for further checks, so didn’t consider it could have prevented Mrs J’s loss or was liable in some way.

Unhappy that she wasn’t reimbursed for the funds she had lost, Mrs J referred the matter to our service.

Our Investigator reviewed everything and didn’t recommend the complaint be upheld. They didn’t think HSBC ought to have done more to identify the payment as potentially fraudulent in the circumstances or have a cause for concern that Mrs J was at risk of financial harm or was falling victim to a scam. So they didn’t think HSBC needed to step in and intervene or carry out additional checks on the payment.

They also considered that neither a ‘chargeback’ or ‘Section 75’ claim would have been successful - so there wasn’t anything further HSBC could do to help Mrs J recover any funds.

Mrs J disagreed with the Investigator's opinion. Broadly summarised, Mrs J considered that the payment was unusual, and HSBC should have taken further steps to verify its legitimacy as it has an obligation to protect its customers from fraud. So Mrs J remained of the opinion that HSBC could have done more to prevent the loss.

As the matter hasn't been resolved, it's been passed to me to decide.

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.

I'm very aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether HSBC should have done more to prevent Mrs J's losses. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having done so, I'm not upholding Mrs J's complaint. I know this outcome will disappoint Mrs J. She was the innocent victim of a cruel and sophisticated scam and lost a considerable amount of money that was for a holiday for her and her family. But in weighing everything up, I don't think I can fairly say HSBC should reimburse her or are liable in some way. I'll explain why.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank (in this case, HSBC) is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions.

It is the case that Mrs J authorised the payment in dispute and that's accepted by all parties. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mrs J is responsible for the payment. That remains the case even though Mrs J was the unfortunate victim of a cruel scam and was duped into authorising the payment.

There are times when, dependent on the payment, I might expect a firm to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms (like HSBC) should fairly and reasonably have been on the lookout for the possibility of fraud in order to protect its customers from fraud.

What does this mean for Mrs J?

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mrs J when she made the payment, or whether it should have done more than it did.

I've thought about this carefully. Here, Mrs J had authorised a credit card payment of £3,263.13 – to a legitimate money transfer provider, W. I'm mindful that with credit cards, they are often used for slightly larger one-off purchases. In this case, there weren't multiple payments leaving her credit card account in quick succession – which can often be an indicator of financial harm. Nor was the payment going to a retailer / merchant whereby the risk could be deemed as greater – such as a cryptocurrency exchange provider (given the recent rise in scams related to cryptocurrency). Here the transaction was going to a legitimate retailer / money transfer provider. I can't fairly say that there was anything unusual or remarkable about the payment, or the amount, that reasonably ought to have alerted HSBC to the possibility Mrs J was potentially at risk of financial harm. And not to such an extent where I would expect HSBC to have concerns whereby it ought, fairly and reasonably, to have stepped in and directly question Mrs J further about the payment.

In short, I don't consider HSBC acted unfairly by not flagging Mrs J's payment for additional checks of further direct questioning. So I don't consider I can fairly say it should have reasonably been on notice and stepped in which may have prevented Mrs J's loss or that it is liable in some way.

Section 75 claim (under the Consumer Credit Act) and Chargeback claim - Visa

Unfortunately, under both schemes – that offer some additional protection to card payments, Mrs J wouldn't have had a successful claim.

For a successful Section 75 claim – there needs to be a 'debtor-creditor-supplier' agreement. Here Mrs J (as the debtor) paid through her credit card provider (the creditor), through W (the supplier) with the funds then being transferred on by W to the supposed rental company. So in essence there isn't a link between HSBC (as the creditor) and the ultimate beneficiary – as the supplier here is W – not the ultimate beneficiary. So there wouldn't be a valid claim given the nature of the parties involved in the payment and when considering the requirements of the 'debtor-creditor-supplier' agreement/arrangement.

And in relation to a 'chargeback' – unfortunately the merchant is W, and W carried out its service and transferred the funds. So any chargeback raised would be against W and it would have been successfully defended by W, given it had fulfilled its requirements. Therefore there wouldn't have been any reasonable prospect of success under this scheme either.

Summary

I'm very sorry to hear of what's happened to Mrs J. She sent money in good faith for what she believed was for accommodation for her and her family's holiday, and she did not receive anything in return for it. But overall, while I appreciate Mrs J's been the unfortunate victim of a scam, I think HSBC's decision not to refund her in this instance was fair and reasonable in the circumstances.

I say this because I don't think I can fairly or reasonably say HSBC are liable in some way. It followed Mrs J's instructions to make the payment and I haven't seen any reason why it shouldn't have done so. And unfortunately, neither a 'Section 75' claim nor a 'chargeback' claim would have been successful. So there wasn't anything further HSBC could do to help Mrs J recover any funds.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 20 September 2024.

Matthew Horner
Ombudsman