

Complaint

B, a limited company, complains that HSBC UK Bank Plc didn't do more to help after it fell victim to a scam. The complaint has been brought on behalf of B by one of its directors, Mrs C. For simplicity's sake, I have generally referred to Mrs C in this decision

Background

The background to this case is well known to the parties so I'll only summarise it here. In November 2022, B fell victim to an email interception scam. Mrs C was expecting to make a payment to a supplier from B's account. At the last minute, she received an email requesting that she make the payment to a different account. The new account was with a bank in the USA that I'll refer to as T.

Unfortunately, that email hadn't been sent by the company Mrs C thought she was dealing with. It had been sent by a fraudster who had hacked the company email account. The fraudster inserted their own bank account details into the email. As a result, B paid the funds to a fraudster's account, rather than to the intended payee.

The following payments were made:

15 November 2022 at 6:04am	£17,370.66
16 November 2022 at 3:05am	£13,163.77

Mrs C realised what had happened very quickly after the second payment. She contacted HSBC. Its system notes suggest this happened at around 8:15am on 16 November 2022. She spoke with an advisor. She says that the advisor told her she'd notified the bank quickly enough that it should be possible to recover the funds. She says she was told that they remained in a *"holding account."*

Ultimately, HSBC didn't recover the payments and didn't agree to refund them either. It said that *"the details were not checked by yourself prior to being input and therefore on this basis, we will not be providing a reimbursement"* but it doesn't appear to have responded on this question of recovery of funds. It did, however, agree to pay B £250 in recognition of the inconvenience it had experienced.

Mrs C wasn't happy with the response and so she referred her complaint to this service. It was looked at by an Investigator who didn't think HSBC needed to pay a refund. She noted that good industry practice required that it be on the lookout for account activity that might have indicated that their customer was at risk of financial harm due to fraud. On spotting such a payment, it would be expected to respond in a manner proportionate to the risk identified. In this instance, however, she wasn't persuaded it would've had any reasonable grounds for intervening.

Mrs C didn't agree with the Investigator's view. In particular, she argued that HSBC hadn't taken adequate steps to recover the payments from the receiving account, particularly since

she believed that the funds would've been in a holding account at the time of the call. The Investigator put Mrs C's argument to HSBC. It said that *"international payments are not held in a holding account, they are released from the original account the payment was made out from."*

As Mrs C disagreed with the Investigator's view, the complaint has been passed to me to consider.

Findings

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

I issued provisional findings on this complaint on 8 August 2024. I wrote:

Fraud prevention

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that HSBC be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

In this instance, I'm not persuaded that it would've had reasonable grounds to stop either payment. While they were certainly payments of a significant size, I've looked at B's bank statements, and I can see that there were several large payments in the months leading up to the scam. For example, in the two months prior to the scam, there were two payments of around £20,000 and four of around £5,000 - £10,000.

I don't think HSBC would've had any cause for concern about these two payments. I know that it will be greatly disappointing to Mrs C, but I'm not persuaded HSBC did anything wrong when it processed them without questioning them further.

Recovery of funds

I do, however, have concerns about whether HSBC did enough to recover B's money. Mrs C asked HSBC to make a payment from an HSBC UK account to T. As I understand it, there's no direct relationship between the two banks and so the payments were transferred via the correspondent bank network. Instead of funds being transferred directly, the two banks use a third-party bank where they both hold an account. HSBC transferred B's funds into its own account with HSBC New York. It then transferred them on to T's account with HSBC New York. T would then remove the funds and credit their own customer's account.

As I understand it, the settlement of payments made via the correspondent banking network is usually only carried out during standard business hours. According to information on cross-border payments made via the correspondent banking network published by the Bank of England:

Balances in bank accounts can only be updated during the hours when the underlying settlement systems are available ... In most countries, the

underlying settlement system's operating hours are typically aligned to normal business hours in that country. Even where extended hours have been implemented, this has often been done only for specific critical payments. This creates delays in clearing and settling cross-border payments ...”¹

HSBC hasn't provided me with any evidence that suggests any specific extended hours for settlement were in place that might be relevant to the outcome here. At the time of the second payment, it was 3:05am in the UK and 10:05pm in New York.

The payment was, therefore, sent to the correspondent bank outside of business hours. By the time HSBC UK was informed that the transfers had been made in connection with a scam, it was around 4am New York time. That meant that it would be several hours before B's payment credited the fraudster's account with T. HSBC UK therefore had several hours in which to send a notification to the correspondent bank and stop the onward transmission of funds. Unfortunately, HSBC UK didn't send any notification until several days later meaning that there was no prospect of recovery at all.

HSBC UK has pointed out that, although it sent a message to the correspondent bank and to T later than it should've done, it has never received a reply to its enquiries. It says that this suggests that, even if it had attempted recovery earlier, it would've led to similar results. I'm not persuaded by that. By the time it raised those enquiries with the correspondent bank, several days would've elapsed since the transfer had been processed. Furthermore, the messages sent didn't actually ask for a reply, only for funds to be returned. I don't think any of this can be taken to indicate how the correspondent bank would've responded if the funds were still in the account.

HSBC has pointed out that its counterpart in New York is a separate business. This means it has no control over how it responds to queries like this one. But until HSBC New York processed the payment, the funds remained in an account that belonged to HSBC UK and the fraudster wouldn't have any legal entitlement to them.

Overall, HSBC didn't act promptly enough after Mrs C told it that the payments were connected to a scam. If it had done so, I'm persuaded that it would've been able to recover the second payment.

I don't think I can reach the same conclusion regarding the first payment. By the time Mrs C called HSBC, that payment would've reached the account with T. It's highly likely that the fraudsters would've moved those funds on as quickly as possible. It's also likely that any return of those funds would be subject to the local law in T's jurisdiction. That often means that there are strict requirements, such as a court order, evidence of a police investigation or even the consent of the account holder. Overall, I don't think there was any realistic prospect of recovering the first payment from the account with T.

Mrs C responded to say that she didn't agree with the provisional decision. She argued that the first payment ought to have triggered an intervention on the part of HSBC. She pointed out that, although B has an established history of making payments to businesses in China, this payment was made to a bank in the United States. It had never previously sent payments to the United States before and so, in Mrs C's view, this should've been regarded as unusual and out of character. Mrs C also expressed scepticism that the first payment was processed so quickly that it was irrecoverable the following day.

¹ <https://www.bankofengland.co.uk/payment-and-settlement/cross-border-payments>

HSBC also disagreed with the provisional decision. It submitted evidence of the precise times the payments were processed by HSBC in New York. This showed that the payments were, in fact, processed outside of core business hours. The first payment was transferred on at 6:36am in New York on 15 November. The second payment was processed at 06:34am on 16 November. HSBC argues that this shows that, by the time the scam was reported, the first payment had long since been transferred on to the receiving bank. It also shows that there were around two and a half hours between B reporting the scam and HSBC New York transferring their funds to the receiving bank. However, it says that, even if it had made contact with HSBC New York immediately (i.e., 4am UK time, 11pm New York time) this was outside business hours and there wouldn't have been anyone available to deal with their enquiry.

I've reconsidered all the available evidence and the further arguments submitted by both sides. Having done so, I'm not persuaded to come to a different outcome. First, I'm not persuaded to change my conclusions in respect of the recovery of funds. While HSBC has now shown that B's payment was cleared by HSBC New York earlier than I had expected, there was still a period of around two and a half hours in which it could've made contact and asked that the onward transmission of those funds be prevented. HSBC says that there wouldn't have been anyone available to respond to its message at 4am, but I've still not seen any evidence to show that it couldn't have been picked up by someone before it was eventually processed at 6:34am.

I've also considered Mrs C's argument that, while B had a history of making international payments, it had never made any to the USA before. It had only previously sent payments to counterparties in China. I can see the point she's making, but I'm afraid I'm not persuaded by it. The initiation of an international payment by an account for the first time could represent a significant shift in account activity to the extent that a bank would need to be mindful of the potential fraud risk.

However, from HSBC's perspective, the payment was being made to a business that B had paid multiple times before. As far as it could see, the only difference was that the payment was being made to an account in the USA. As far as I can see, that business does have some operations in the USA and does some business there. Alongside the fact that the payment was in keeping with the way the account had been used historically, I don't think I can reasonably say that HSBC ought to have had concerns about fraud risk.

I sympathise with Mrs C's position. I can see that, if HSBC had taken steps in connection with that first payment, there was a reasonable prospect that it could've prevented the losses to the scam. However, I think the argument that it should've recognised the risk can only really be made with the benefit of hindsight.

Final decision

For the reasons I've set out above, I uphold this complaint in part.

If B accepts my final decision, HSBC UK Bank Plc should refund the second payment made in connection with the scam. It should also add 8% simple interest per annum to that payment calculated to run from 16 November 2022 until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 29 October 2024.

James Kimmitt
Ombudsman