

The complaint

Mr P is unhappy HSBC UK Bank Plc declined to reimburse him for the money he lost when he fell victim to a scam.

What happened

Mr P is represented in this complaint by a claims management company, for simplicity I will refer to Mr P throughout this decision, even when referencing what his representatives have said on his behalf.

Mr P fell victim to a safe account scam. He was contacted by an individual claiming to work for his credit card provider (which I'll call "A") who asked him about unusual transactions on his card and told him his account with HSBC could be at risk. He was told he'd be contacted by someone from HSBC, and when he spoke with that person he was told that he needed to move his money into an account he held with an e-money institution – which I'll call R - and from there on to a new account with HSBC which had been set up under an alias. Unfortunately, and unknown to him at the time, Mr P was actually speaking with fraudsters.

Believing that he was genuinely dealing with a legitimate banking institution, Mr P ended up moving £22,300 from his HSBC account to his account with R. From there, Mr P made a payment for £19,800 to the beneficiary account details provided by the scammer. When the alias account did not appear on Mr P's HSBC app, as he'd been told it would, he realised he had been scammed, and contacted HSBC to let it know.

HSBC logged the fraud, but ultimately it told Mr P that it wouldn't be reimbursing him for the payments he had made from his account. HSBC said there had been no indications that these payments were suspicious, and so did not feel it should be responsible for Mr P's loss.

Unhappy, Mr P referred the matter to our service. One of our Investigators looked what had happened, and they did not feel HSBC had done enough to intervene given the size of the payments Mr P was making and the pattern of spending. They considered that HSBC should have stepped in at the time of the second payment Mr P made to R, so they said that HSBC should bear some responsibility for Mr P's loss, but felt that responsibility should be shared with R and with Mr P. So, they recommended that HSBC refund part of Mr H's loss, plus interest.

HSBC accepted the Investigator's findings, but Mr P did not, he did not think it was fair for him to bear responsibility for some of his loss given the circumstances of the scam he fell victim to.

I issued my provisional decision on this case on 19 September 2024, explaining why I did not consider that Mr P should bear any responsibility for his loss. Mr P accepted my findings, but HSBC did not. It has commented that there were significant red flags that should have put Mr P on notice that he was at risk of being scammed.

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.

In my provisional decision I explained the following:

"I'm satisfied Mr P authorised the payments that are the subject of this complaint for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, in broad terms, the starting position is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Regulations and the terms and conditions of the customers account. And I have taken this into account when deciding what is fair and reasonable in this case.

There's no dispute that this was a scam, although Mr P didn't intend his money to go to scammers, he did authorise the disputed payments. As explained above, HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Our Investigator found that Lloyds should have intervened by contacting Mr P directly at the time of the second payment he made to his account with R, and I am also satisfied that it should have intervened directly at that stage. This was the second large payment in a short amount of time, to an e-money institution (albeit one that Mr P had an existing relationship with) and had been preceded by several payments transferring large amounts of funds from Mr P's other HSBC accounts, I think this pattern should have caused HSBC some concern. I consider that a proportionate intervention at that time would have been for HSBC to make direct contact with Mr P to establish the circumstances surrounding these payments.

And I consider that, had HSBC done this, then it is likely that the scam would have been uncovered. I've not seen anything to suggest that Mr P was given any kind of cover story to explain the payments he was making, or otherwise told to lie to the bank. So, I think the scam would have quickly come to light and HSBC could have prevented the losses Mr P incurred from the second transfer onwards. It follows that I therefore think HSBC should bear some responsibility for that loss.

I have also considered Mr P's complaint against R, and in that case I have found that R should also bear partial responsibility for Mr P's loss.

The question then is whether it is reasonable for Mr P to also bear some responsibility for his loss. Our investigator considered that Mr P should bear some responsibility for his loss. They felt that what Mr P was being asked to do was unusual, and should have caused him some concern. They also noted that, when searching for the phone number had had been called from, Mr P should have seen that an independent website suggested that the number was associated with scam activity. So, they considered that it was fair for Mr P to bear partial responsibility for his loss.

I do not agree. The initial phone call that Mr P received, purporting to be from A, appeared to come from a phone number belonging to A. I appreciate that when conducting an online search for this number there is also a search result from an independent website which states (in smaller text below the main search result) that this number has been associated with scams, but I think I must also bear in mind that, in the highly stressed situation Mr P found himself in, the prominent search result showing that the number did belong to A is more likely to have caught his attention. I don't think it is fair to say Mr P was negligent for

believing that he was being legitimately called by A if he did not, as I believe is most likely, see the full search result saying the number could be associated with a scam.

I consider that everything Mr P then went on to do must be seen in that context, that he sincerely believed he was talking to a legitimate representative of a known and trusted banking institution. I acknowledge that the actions Mr P was then asked to take were unusual, but he was in a highly pressured situation taking steps that he believed would be the only way to protect his money. And any specific concerns he might have had do appear to have been answered by the scammers, he was provided with an explanation of why his money had to be moved in the way it was, and I don't think he therefore acted unreasonably in the circumstances by acting on what he believed to be the legitimate instructions of his bank.

With all this in mind, I don't currently intend to find that it is fair or reasonable for Mr P to bear any responsibility for his loss. I am currently intending to find that Mr P's loss should be refunded to him in full, with responsibility shared between HSBC and R. Mr P transferred £22,300 to his account with R, but only £19,800 of that went on to be lost to the scammer, £2,500 remained in his account with R after the scam."

HSBC has said that what Mr P was asked to do by the scammers was unusual, and should have caused Mr P some concern. But as I noted in my provisional decision, Mr P sincerely believed he was speaking with a legitimate representative of his bank's fraud team, who was able to address any concerns he had about what he was being asked to do. In hindsight, I agree that the steps Mr P was asked to take were unusual, but given the enormous pressure Mr P was under at the time, I don't think it is fair to say he was negligent to follow the instructions of someone who he believed was a bank employee trying to keep his money safe.

HSBC has also said that it should have been clear to Mr P from searching for the numbers he was called from online that he was at risk of a scam. But as I have already explained in my provisional decision, I do not agree. In the particular circumstances of this scam I do not consider that Mr P was negligent in believing that he was being called by representatives of his banks, given the prominent search results showing those phone numbers did belong to legitimate banking institutions.

Lastly, HSBC has said that Mr P has previously worked for a bank, and so should have a better understanding of scams. But given Mr P's particular job role, I can't see how simply being employed by a bank would mean that he had any more awareness of scams than any other member of the public.

So, in summary, while I appreciate HSBC taking the time to respond to my decision, nothing it has said changes my findings that Mr P should not bear any responsibility for his loss here. I remain satisfied that Mr P should be reimbursed in full for his loss, with responsibility shared between HSBC and R.

Putting things right

To resolve this complaint HSBC UK Bank Plc should:

- Refund 50% of Mr P's loss from the second payment made to R onwards. Mr P transferred £13,700 to R from this point, but only £11,200 was lost to the scammers. So HSBC should refund £5,600 to Mr P; and
- Pay 8% simple interest per annum on this refund from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. HSBC UK Bank Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 November 2024.

Sophie Mitchell
Ombudsman