

## **The complaint**

Mr G is unhappy HSBC UK Bank Plc (“HSBC”) hasn’t offered him a refund in its capacity as the receiving bank, after he said he was the victim of an Authorised Push Payment (“APP”) scam.

Mr G has used a Claims Management Company (CMC) to bring his complaint to both HSBC and our service.

## **What happened**

Mr D transferred £29,900 to a business account held with HSBC. He later raised a claim with his bank saying he’d made the payments as part of a scam. He also raised a complaint against HSBC saying it was responsible for his loss for the following reasons:

- it failed during its account opening process to identify its customer was a fraudster;
- it failed to identify suspicious account activity which could have prevented Mr G’s losses; and
- it failed to act quickly and take appropriate actions when it was notified about the scam.

HSBC looked into the claim. It said at the time it carried out the relevant account opening checks. It also said it wasn’t accepting liability for the scam and was not offering any reimbursement.

Unhappy with HSBC’s response, Mr G brought his complaint to this service.

Our investigator looked into the complaint and said they’d considered HSBC’s obligations and its decision not to refund Mr G in line with its application of the CRM code. They said:

- they couldn’t consider the account opening process here as they had received evidence about the date the account in question was opened and they were satisfied we didn’t have the jurisdiction to consider this element of the complaint.
- There wasn’t anything about the account activity that did or ought to have given HSBC cause for concern to the point it should’ve intervened and therefore prevented Mr G’s losses.
- The sending bank believed this was a private civil matter. So, it didn’t notify HSBC of the payments made to its account. Because HSBC weren’t obliged to return Mr G’s funds as this matter has been deemed a civil dispute, it didn’t impact the outcome of the complaint.

Mr G’s CMC asked for the complaint to be passed to an ombudsman for final decision and so the complaint was passed to me.

## 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 minded to come to the same conclusions as the investigator for largely the same reasons. I'll explain why in more detail below:

DISP 2.7.6R(2B) is applicable where the consumer has been the victim of an Authorised Push Payment (APP) scam. This decision focuses solely on the actions of HSBC – as the Receiving Firm of the account where Mr G made payments to.

Among other things, regulated firms receiving payments like HSBC, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

And, more generally given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice').

I'm also satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

Also relevant in this case, as mentioned earlier, is the CRM Code that HSBC agreed to abide by the principles of.

The relevant considerations for Receiving Firms under the CRM Code set out the following:

### *"CRM Code: Payment Journey – Receiving Firm*

*SF2... Receiving Firms should take reasonable steps to prevent accounts from being used to launder the proceeds of APP scams. This should include procedures to prevent, detect and respond to the receipt of funds from APP scams. Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.*

#### *Prevention*

*SF2(1) Firms must take reasonable steps to prevent accounts being opened for criminal purposes.*

#### *Detection*

*SF2(3) Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds.*

### *Response*

*SF2(4) Following notification of concerns about an account or funds at a receiving Firm, the receiving Firm should respond in accordance with the procedures set out in the Best Practice Standards."*

In considering all of the above, and to determine if HSBC met the standards required of it under the CRM Code, I have looked at whether there was anything in the way the account was being used that should have given HSBC any cause for concern and finally; once notified of fraud, whether it acted appropriately and in a timely manner. And if I consider there were failings in relation to any of the above, I have to consider whether HSBC's acts or omissions resulted in Mr G's losses.

I would like to point out that at this point, that while HSBC has provided our service with information about the receiving bank account – it has done so in confidence. This is to allow us to discharge our investigatory functions and HSBC has provided that which is necessary for the determination of this complaint. Due to data protection laws our service can't share any information about the beneficiary, the receiving bank account or any investigation and action HSBC subsequently took. However, I would like to assure Mr G I have thoroughly reviewed and considered all the information provided before reaching my decision.

### *Prevention – the account opening process*

As the investigator set out, we can't consider the account opening element of the complaint because the account was opened prior to 31 January 2019. This means we can't look at HSBC's acts or omissions with regards to the account opening. This is because DISP 2.7.6R(2B) which enables a payer to complain about the receiving bank, is limited to acts or omissions on or after the 31 January 2019.

### *Detection – account activity*

The primary duty of a bank is to follow their customer's instructions and make payments as directed in line with the mandate – which is usually set out in the terms and conditions of the account. The CRM Code sets out that Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds. This ties in with long standing regulatory and legal obligations Banks and Building Societies have to monitor their business relationships and to be alert to other risks - such as fraud, which would include giving consideration to unusual and out of character transactions.

Prior to the payments from Mr G, I can't see that there was any suspicious activity on the account that means HSBC failed to prevent or detect the receipt of fraudulent funds. I'm also satisfied there was no notification of fraud on the account prior to the payments Mr G made into the account and no other red flags where it could reasonably be argued that HSBC might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions. So, from what I've seen, I don't think HSBC ought reasonably to have had concerns where I would have expected it to have intervened, so I can't fairly say that it could have prevented Mr G's losses in this way either.

### *Response to the notification of fraud*

The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of APP fraud and notify the Sending Firm if any funds remain for recovery. In this case, the Sending Firm believed this was a private civil matter. And because of this, it didn't notify HSBC of the payments Mr G alleged as fraudulent. This in turn meant HSBC wasn't required to return Mr G's funds as this matter had been deemed

a civil dispute. So, taking the above into consideration, I'm not persuaded I can fairly say HSBC didn't do enough to respond to the alleged APP fraud.

Overall, I'm satisfied that HSBC met the standards required of it under the CRM Code. I also don't think HSBC could've done anything more as the Receiving Firm to have prevented the loss of Mr G's money.

I appreciate this will come as a disappointment to Mr G, but I'm satisfied that HSBC doesn't need to refund him his losses.

### **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 G to accept or reject my decision before 26 May 2025.

Emly Hanley Hayes  
**Ombudsman**