

## **complaint**

Mr R is unhappy with the actions that HSBC UK Bank Plc (HSBC) took both before and after he'd been the victim of a scam. He believes HSBC misled him by giving him incorrect information – which resulted in him sending payments to a scammer.

## **background**

On 17 January 2019 Mr R called HSBC. He had some questions about a £50 deposit payment he was looking to make for a car he saw advertised for sale online. Subsequently Mr R made five faster payments between 18 January and 20 January 2019, totalling £310, from his account to the seller's bank, which I'll refer to as bank 'N'.

Mr R became concerned with the lack of responses from the seller and contacted HSBC on 29 January 2019 to ask for a refund for the full amount he had sent. He told HSBC he'd been assured prior to making the payments that he would be "*insured*", the matter would be treated as fraud and the money would be returned to him within 20 days.

HSBC wrote to Mr R the next day to say it appears he had been the victim of an authorised push payment ('APP') scam. However, it was unable to agree to a refund as Mr R had willingly made the payments. HSBC concluded it had made no error in processing the payments. It had followed its legal obligation and processed the payments in accordance to his instructions. HSBC said it had taken the step to contact bank 'N', to advise it of the allegations against its customer and that Mr R was free to raise a dispute with bank 'N' directly but there was no further action it could take.

Unhappy with HSBC's response Mr R brought his complaint to our service.

One of our investigators looked into the matter. She thought HSBC didn't make any errors in allowing the payments to leave Mr R's account. She also said she had listened to the relevant calls between Mr R and HSBC. She was satisfied that HSBC provided Mr R with adequate advice – in that there was a "*possibility*" of recovering his money, but this was not a definite assurance. She also found that HSBC did contact bank 'N' in an attempt to recover the funds – which is as she'd expect in these circumstances. Based on this she concluded that she didn't think HSBC needed to make a refund.

Mr R disagreed and questioned whether the investigator had listened to the initial call. He believed had she done, she would've heard that HSBC had provided misleading and incorrect information. He felt strongly that had HSBC not misinformed him he wouldn't have sent the payments. Mr R claimed multiple discussions took place and asked for a copy of the call recording to ensure the right call was put forward as evidence before the case was reviewed by an ombudsman. The investigator confirmed to Mr R that she'd listened to the call recording and asked HSBC for its consent to share.

HSBC didn't agree for our service to share the call recording with Mr R. But said, he can, however, request this directly.

As Mr R didn't agree with the investigator's findings and had requested his complaint be reviewed by an ombudsman, the complaint was passed to me for a final decision.

After reviewing the case I felt it would be helpful for Mr R to hear the call recording – so I asked HSBC for its permission to share this information. HSBC made an exception and agreed that we could share the call recording of 17 January 2019 with Mr R.

I spoke to Mr R to explain we'd been given consent to share the call recording from 17 January 2019. Mr R was grateful, however, he said he'd made several calls and is concerned HSBC hasn't shared everything with our service. He also feels that HSBC telling him it "possibly" could recover his money was misleading and what HSBC should've said is that it "possibly" won't be able to recover his money - creating reasonable doubt. Had HSBC done this he wouldn't have sent the payments. He believes by responding in the way it did, HSBC misled him, giving him confidence, his money would be refunded. I asked Mr R to let me know once he'd listened to the call whether he accepts the investigators findings or would still like me to review his complaint. If the latter, I invited Mr R to make any submissions and/or submit any further evidence he'd like me to consider before I issue my decision.

Mr R didn't respond with anything further, and the time for doing so expired. So, I've gone on to issue my final decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I've come to the same conclusions as the investigator and for broadly the same reasons.

Firstly, Mr R doesn't dispute authorising the payments in the first instance and HSBC had an obligation to follow his instructions in line with the mandate it held on the account. Having considered the circumstances of the payments I'm persuaded HSBC acted correctly in executing Mr R's payments as he had instructed. I don't think there was anything unusual which should've aroused HSBC's suspicions or caused it to stop the payments after he'd authorised them.

The crux of Mr R's complaint is that he would never have made the payments, if HSBC, when asked, had correctly informed him that it may not be able to recover his money.

Mr R claims that he spoke to HSBC on more than one occasion before making the payments and was reassured that if he sent the money he would be protected and that he would be refunded if anything went wrong. However, Mr R hasn't been able to provide specific details or evidence of the calls he claims to have made but he is of the belief that HSBC hasn't provided this service with all the relevant call recordings.

HSBC has said the only discussion it had with Mr R in relation to this matter prior to the payments being made was on 17 January 2019 and it has provided the related call recording. I have no reason to think that HSBC has only sent selected calls. So whilst I accept what Mr R has told me is his honest recollection, I think it's possible given the time that has passed since the events, he might not remember exactly what happened at the time – and it's plausible that he may be confusing conversations which occurred after or elsewhere with those that happened prior to the payments being made.

Similarly, I think if Mr R had been told that he had protection for the payments he was intending to make by HSBC over several conversations, I would've expected him to have shared that with HSBC when he reported the scam on 29 January 2019. Having listened to the conversation the inference is that he only had one conversation. So, I think on balance it's more likely than not Mr R only held one conversation with HSBC in relation to this matter, prior to making the payments, that being on 17 January 2019.

So, I've gone on to consider the content of the discussion Mr R held with HSBC on 17 January 2019. Having listened to the call carefully I'm afraid I can't agree with Mr R that he was advised his payments were protected and that he would receive a full refund.

Having spoken to Mr R I appreciate how strongly he feels about HSBC's actions. I understand he feels let down by HSBC, and I can see why. He believes HSBC should've been proactive in educating him and warning him about scams. It should've explained more clearly that sending a payment in the way he was intending didn't offer any form of protection. And rather than tell him it "*possibly*" could recover his money it should've told him there was a possibility he wouldn't get his money back. Mr R says if he had known this, he would never have made these payments.

Whilst I can see with the benefit of hindsight why Mr R might feel HSBC should've warned him. I'm not persuaded this would've made a difference. I say this because I'm satisfied Mr R already had an awareness and concerns about the authenticity of the third party. I understand this to be the catalyst for his call to HSBC on 17 January 2019. Mr R was looking for answers and to get some reassurance from HSBC about the recovery of his money if the third party turned out to be fraudulent.

I've taken on board and carefully considered everything Mr R has told me about how he interpreted what was said to him when he called HSBC prior to making the payments. But I'm sorry to say that whether HSBC said;

- we "*possibly*" could recover your money; or
- we "*possibly*" won't be able to recover your money

Ultimately the message is the same, that there is no certainty or guarantee of recovery – so I'm unable to agree with Mr R that HSBC has provided him with incorrect information. And I can't fairly hold HSBC responsible for how Mr R interpreted the information – nor can I reasonably have expected it to have known this.

Overall, I think that HSBC clearly explained to Mr R the process if he became the victim of a scam. It did not tell him his payment would be protected nor did it offer any guarantee of a refund. Ultimately the decision about whether to go ahead and make the payments was Mr R's and he chose to make the payments knowing the risks involved. I can accept there may have been a misunderstanding on Mr R's part. But I can't say that he was misled by HSBC. So, in the circumstances I don't think that I would be able to fairly hold HSBC responsible for Mr R's losses.

And taking all of the circumstances of the complaint into account, I'm satisfied that HSBC has acted reasonably in taking the necessary steps to notify and try to recover Mr R's funds from the beneficiary bank.

I'm very sorry as I know this will be disappointing news for Mr R and while I understand Mr R's strength of feeling about his complaint, I don't consider HSBC to have treated him unfairly. Ultimately, Mr R's loss is the result of a third parties' actions and I don't think it would be fair to ask HSBC to make good the loss when there's no evidence it's done anything wrong.

**my final decision**

For the reasons outlined above, 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 R to accept or reject my decision before 4 January 2021.

Sonal Matharu  
**ombudsman**