

complaint

Miss S complains that HSBC UK Bank Plc hasn't reimbursed money she lost as a result of a scam.

background

On 28 July 2018 Miss S made a payment of £2,500 from her HSBC account to a third-party account (the 'beneficiary account'), also held with HSBC. Miss S made the payment as a deposit plus one month's rent for a property she says she'd seen advertised on a reputable marketplace.

On 28 August 2018, one month later, Miss S went to the property to collect the keys. She says that after speaking to the real homeowner there, it became clear she'd been scammed; and she contacted the police and HSBC about the payment she'd made.

HSBC investigated and said it had been unable to recover the payment from the beneficiary account, and that it wasn't able to reimburse Miss S. Miss S was unhappy and referred the matter here.

An adjudicator here reviewed Miss S's complaint. He didn't think HSBC should reasonably have been expected to identify the payment as particularly unusual or suspicious. And as Miss S didn't interact with HSBC staff at the time of the payment request, he didn't think he could reasonably say HSBC missed an opportunity to identify the scam and prevent the payment. He also said that the payment Miss S made had already been removed from the beneficiary account by the time Miss S reported the scam to HSBC. So he didn't uphold Miss S's complaint.

Miss S didn't accept the adjudicator's assessment, so the complaint has been passed to me for an ombudsman's 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.

Having done so, I've reached materially the same conclusions as the adjudicator, and for materially the same reasons.

I know Miss S has been waiting for this final answer for a long time and this isn't the outcome she's been hoping for. I understand why she has wanted to do all she can to try to get her money back. And I have no reason to doubt that Miss S has, as she says, been the victim of a scam. I'm really sorry she's lost this money. Here, however, I need to decide whether it would be fair and reasonable for HSBC, in all the circumstances of this case, to be held responsible for this loss. Overall, I'm satisfied that it wouldn't and 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 is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

That's not the end of the story though. The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty'). And regulated firms like HSBC are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

As a matter of good industry practice at the time, I consider firms should also have taken proactive steps to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years – which banks are generally more familiar with than the average customer.

So, with all this in mind, I have considered the position carefully.

I've reviewed Miss S's account statements leading up to the payment. And overall and in the context of Miss S's normal spending and account usage, I'm satisfied here that it wouldn't be fair and reasonable to say that the amount and type of payment should have appeared unusual or suspicious to HSBC. The payment was for a greater amount than Miss S's usual spend. But she had made other payments larger than her usual spend before – a payment in April 2018 of around £1,700, a payment in January 2018 of around £1,950, and a payment in September 2017 of around £2,470. So I'm satisfied that it wouldn't be fair and reasonable to say her payment request of £2,500 in July 2018 ought to have appeared sufficiently unusual that HSBC ought to have spoken to Miss S before allowing it through. I also don't think the fact the payment was to a new payee means HSBC should, in the particular circumstances here, have automatically thought it was suspicious and that Miss S was at risk of financial harm. So in the circumstances here, I'm satisfied that HSBC didn't do anything wrong by following the instructions Miss S gave to send the money without questioning Miss S about the payment first. And as there wasn't any interaction between Miss S and HSBC as part of the payment request, HSBC didn't otherwise unreasonably miss an opportunity to unearth the scam before the payment was made.

I've thought about the possibility that the beneficiary account holder's name didn't match the payee name Miss S instructed. However, at the time the payment was made, the relevant regulations – the Payment Service Regulations 2017 – set out that payments are sent according to the 'unique identifiers' (typically the account number and sort code).

In particular, section 90 of the Payment Service Regulations 2017 states:

"(1) Where a payment order is executed with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier."

“(5) Where the payment service user provides information additional to that specified in regulation 43(2)(a)…the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.”

The impact of this is that the payment was correctly processed if it went to the account number and sort code instructed by the payer (here, Miss S). And here, given the capacity in which HSBC was acting for Miss S (as her payment service provider following her payment instruction), and that as I've already explained, I don't think HSBC could reasonably be deemed to have been on notice that there was anything unusual or suspicious about her sending a sum of that size to an account held by another customer, I'm not persuaded I can reasonably say it should have done more to check the beneficiary in the circumstances of this payment.

When HSBC became aware of the potential scam on 28 August 2018, it should have acted quickly to try to recover Miss S's money from the beneficiary account. I know this is disappointing to Miss S and I do empathise with the situation she has found herself in. Ultimately, however, it was the fraudster that tricked Miss S. And from the information I've seen HSBC did raise a payment trace on 28 August 2018 and in any event unfortunately the funds Miss S sent to the payee had already been utilised and spent by the payee before 28 August 2018 – so I am satisfied that HSBC reasonably wouldn't have been able to recover the money in any event.

In the circumstances, whilst I empathise with Miss S and appreciate she will be disappointed, I'm satisfied that it wouldn't be fair and reasonable for HSBC to be held responsible for her loss.

my final decision

For the reasons I've explained, I don't uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision by 26 December 2020.

Neil Bridge
ombudsman