

complaint

Miss C's complained HSBC Bank Plc should've done more to protect her from a fraud.

background

Miss C and Mr S were buying a house.

They received an invoice, purporting to come from their solicitors, for legal fees and the deposit. The invoice included the sort code and account number for the solicitors' bank account. Miss C went into her local branch and instructed it to make a CHAPs payment into that account.

HSBC did as instructed but the invoice was a bogus one. Miss C and Mr S were victims of an email diversion scam – a third party had intercepted the solicitors' email account and sent them a falsified invoice. The deposit had been paid into the third party's account.

They reported the fraud to HSBC. It contacted the receiving bank but the money had gone.

Miss C and Mr S lost their deposit of £92,890.

Miss C asked HSBC for a refund. It refused saying it'd acted on her instructions.

They weren't happy with this outcome and so they brought their complaint to this service.

They've said HSBC should've spotted the differences in the payee's name. They've also complained about its poor customer service. They said it sent Miss C a standard letter rather than a personal one. And it didn't keep in touch during its investigations.

Our adjudicator said she didn't think HSBC had done anything wrong. It'd complied with her payment instruction and sent the deposit to the account whose details Miss C had provided.

She agreed the response letter was a standard one but didn't think it was inappropriate or that its service had been poor.

Miss C and Mr S disagreed with our adjudicator's opinion. They've asked for an ombudsman's final decision.

my provisional decision

I issued a provisional decision on 8 May 2017 partially upholding Miss C's complaint.

In summary, I said

- I didn't think HSBC was responsible for Miss C's loss because HSBC followed her instructions and sent the deposit to the account with the sort code and account number, which she'd provided.
- Most banks only use the sort code and account number to process a payment. They don't look at the payee's name and won't normally check this detail.
- There is industry guidance that says banks should highlight that it is this information alone, and not payee's name, on which they will process a payment (APACS

Guidance on handling payments in cases of discrepancy between account name and account number)

- There wasn't any evidence HSBC explained this to Miss C.
- I thought its failure to point out that it wouldn't check the payee's name was a service failure.
- I also thought HSBC could've handled her complaint better.
- It sent a standard letter saying it wouldn't be refunding her because she'd willingly authorised the payment. Although nothing in that letter was factually wrong, I thought its tone was unsympathetic given she'd just lost a hefty deposit on a house.
- She kept trying to get an update from the fraud department. I thought it should've been more helpful by keeping her updated, instead of leaving it to her to chase the bank for progress.
- I didn't understand why HSBC told her to call the receiving bank when it knew it wouldn't speak to her because she wasn't an account-holder. I thought this raised her hopes unnecessarily.

I asked HSBC to pay Miss C £200 for her trouble and upset.

I invited representations from Miss C and HSBC.

Miss C replied saying HSBC never told her it doesn't check the payee's name. I checked its terms and conditions. They don't make it clear to customers that the bank will only use the sort code and account number to process a payment.

I pointed this out to HSBC and suggested it pay £300 to Miss C for its service failure and poor handling of the complaint. It said it couldn't check the payee's name anyway because it doesn't have this information. Only the receiving bank has this information. And it thought £200 was an appropriate amount to resolve this complaint.

my findings

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

For the reasons I've given above, I don't think HSBC should refund Miss C the money she lost. I agree with HSBC that it was merely acting on her instructions to send the deposit to the account number and sort code that she'd provided.

But I do think it should've told her that it doesn't check the payee's name. It can't do this anyway because it doesn't see this information.

I accept that even if it had told her, she probably would have gone ahead with the payment instruction, as she genuinely believed the invoice came from her solicitors. But the APACS guidance advises banks to make this clear to customers. This allows them to think twice about a payment and check the details themselves.

Had HSBC done so, then Miss C might not have needed to bring her complaint to this service.

I also think it could've handled her complaint more sympathetically.

For these reasons, I'm asking it to pay her £300 for her trouble and upset.

As I said in my provisional decision, this is nothing compared to the money she and Mr S have lost. This is an awful situation and I am very sorry for what's happened to them. Unfortunately, there's nothing more I can do to ease their worries. But I hope the reasons for my decision are clear.

my final decision

My final decision is I'm asking HSBC Bank Plc to pay Miss C £300 for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 3 August 2017.

Razia Karim
ombudsman