

complaint

This complaint's about a mortgage application Mr B and Miss S made through HL Partnership Limited. They complain that HL failed to keep their personal information and its own computing systems safe and secure. Because of this, they say a fraudster was able to dupe them into transferring away large sums of money. Some of the money was recovered but Mr B and Miss S remain £20,000 out of pocket, and believe HL should reimburse them.

background

By way of a provisional decision in April 2018, I set out, with reasons, how I thought Mr B and Miss S's complaint should fairly be decided. A copy of the provisional decision is attached below, and forms part of this final decision.

Both parties have replied. Mr B and Miss S have accepted my provisional findings without further comment, but HL has responded with points that I summarise below:

- The fraudster's email was in poor English and directly contradicted what HL had told Mr B and Miss S about not asking them for any money. So Mr B and Miss S must take responsibility for not checking the position with HL first.
- The screenshot of the transaction wasn't viewable and it wasn't clear from the content that Mr B and Miss S had (as they believed at the time) transferred money to HL. HL wasn't expecting money but was expecting statements, so it's unfair to say it should been alerted to possible fraud by a vague comment.
- My provisional decision doesn't consider Mr B and Miss S's own contribution to the loss.

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'm not persuaded to divert from my provisional decision. I'll explain why.

I've looked very hard at what HL had to say in response to my provisional decision, and the difficulty with it is that it doesn't really say anything new that I hadn't already considered beforehand, and addressed in my provisional decision. Essentially, I have a different viewpoint from HL on the email Mr B forwarded to Mr K referring to the bank transfer.

The message wasn't specific in saying the bank transfer had been made to HL, but it didn't need to be. It wasn't, in my view, reasonable to have missed three separate references to a bank transfer in the same message without some suspicion being aroused. It is, after all, HL that makes the point that this type of fraud is a widely-publicised issue. If it believes Mr B and Miss S should have been more vigilant, then it's difficult not to conclude that it should have been as well. Indeed, as a regulated business, its duty to act with skill and care was arguably greater than its customers'.

I haven't ignored or disregarded Mr B and Miss S's contribution to the situation in that they made the first transfer without questioning why they were being asked to. The wider point though is that they made the second and third transfers *after* having notified HL that they'd made the first, and after having *not* been challenged on why they'd done so. So even if it can be agreed that they acted without due care on the first transfer, it's more difficult to reach the same conclusion on those that followed.

HL concludes its response to my provisional decision by saying Mr B and Miss S paid the money away without reference to it, and so the loss was already incurred. But as I've already pointed out, that's not the case with regard to the second and third transfers. HL may not have caused them, but it had an opportunity to stop them happening which it didn't take.

my final decision

For the reasons set out above and in my provisional decision, my final decision is that I uphold this complaint by ordering HL Partnership Limited to:

- pay Mr B and Miss S £20,000;
- calculate and pay Mr B and Miss S interest on £20,000 at 8% simple, from the date the third transfer was made up to the eventual date of settlement;
- calculate and pay Mr B and Miss S interest on £10,000 at 8% simple, from the date the second transfer was made up to the date the money was recovered; and
- pay Mr B and Miss S £300 compensation for their time and for the trouble and upset caused by the events that led to this complaint.

I don't make any award to reimburse Mr B and Miss S any costs they've incurred thus far through instructing their solicitor to bring the complaint to us. It was their choice to do that rather than complain to us directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss S to accept or reject my decision before 14 June 2018.

Jeff Parrington
ombudsman

CONTENT OF PROVISIONAL DECISION

complaint

This complaint's about a mortgage application Mr B and Miss S made through HL Partnership Limited. They complain that HL failed to keep their personal information and its own computing systems safe and secure. Because of this, they say a fraudster was able to dupe them into transferring away large sums of money. Some of the money was recovered but Mr B and Miss S remain £20,000 out of pocket, and believe HL should reimburse them.

background

Mr B and Miss S made the application to HL in late 2017; they dealt primarily with a Mr K. On 11 January 2017, Mr B received an email, purportedly from Mr K, asking that they deposit £12,500 to HL's account as part of the deposit. They did this from Miss S's account and sent Mr K an email with a screenshot of the transaction, to confirm they'd made the transfer.

Mr K, replied saying he was in hospital and that a colleague, Mr P, would be in touch. Two days later, on 13 January, Mr B received an email asking for a further £30,000. This was paid in two separate amounts, £10,000 and £20,000 respectively, to avoid transaction costs.

On 16 January 2017, HL informed Mr B and Miss S that the transactions were fraudulent. They tried to recover the money, and were partially successful. The first two transfers were returned to them but the £20,000 couldn't be recovered. Mr B and Miss S complained, represented by their solicitor.

The main thrust of the complaint was that HL was negligent:

- firstly, in its security processes, such that the fraudsters were able to "hack" into its systems and impersonate Mr K in emails; and
- secondly, in not reacting quickly enough when Mr B and Miss S emailed to say they'd made the first transfer.

Our investigator wasn't persuaded HL had been negligent on either count, and so didn't recommend the complaint be upheld. Mr B and Miss S want to continue with the complaint, so it's been passed to me for review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read the whole file, but I'll confine my comments to what I think is relevant. That's partly a reflection of the informal nature of our service. But it also takes into account that some of the detailed information we've received is commercially sensitive, and therefore can't be disclosed in a decision that will be published.

Much of the argument and evidence in this case have focussed on HL's data protection duties, the security procedures it has in place to meet those duties, and whether it breached those duties in this case. I have to say, none of those issues are relevant, and the case is much simpler than it's been made look.

For me, the key event on which the outcome of this complaint turns is the moment Mr K opened an email bearing the title "Screenshot of bank transfer" and containing a further reference to a bank transfer in the body of the message. HL has said Mr K couldn't see the screenshot attachment, and was expecting copy bank statements from Mr B and Miss S. I'm not convinced that's enough to say HL shouldn't have been alerted that something was amiss.

I don't think an email referring to a bank transfer should reasonably have been mistaken for an email enclosing copy statements. HL may have been expecting to receive statements, but it wasn't expecting to receive any money by transfer. That being the case, as soon as he saw a message talking about HL needing Mr B and Miss S to transfer money to it, the only reasonable and prudent reply for Mr K (or his colleague Mr P bearing in mind Mr K's indisposition) to have sent had to have been a message asking why Mr B and Miss S were trying to do that.

If that had happened, I'm satisfied Mr B and Miss S would have realised they'd been duped, and wouldn't have made the second and third transfers. They made them, in my view, because of the shortcoming in HL's response to them telling it they'd made the first transfer. This wasn't a breach of duty with regard to data protection and security procedures; it was simple maladministration. But it means HL is liable to Mr B and Miss S for their losses arising from the second and third transfers.

The money from the first and second transfers has already been recovered. However, Mr B and Miss S remain £20,000 out of pocket, and so, HL should reimburse them that loss.

my provisional decision

For the reasons set out above, but subject to the further submissions of the parties by the due date, my provisional decision is that I intend to uphold this complaint by ordering HL Partnership Limited to:

- pay Mr B and Miss S £20,000;
- calculate and pay Mr B and Miss S interest on £20,000 at 8% simple, from the date the third transfer was made up to the eventual date of settlement;
- calculate and pay Mr B and Miss S interest on £10,000 at 8% simple, from the date the second transfer was made up to the date the money was recovered; and
- pay Mr B and Miss S £300 compensation for their time and for the trouble and upset caused by the events that led to this complaint.

I don't intend to make any award to reimburse Mr B and Miss S any costs they've incurred thus far through instructing their solicitor to bring the complaint to us. It was their choice to do that rather than complain to us directly.

I'll issue my final decision after 7 May 2018, or sooner than that if both parties confirm they've said and provided all they wish to in response to my provisional decision.

Jeff Parrington
ombudsman