Channel Islands Financial Ombudsman

<u>Ombudsman Final Decision</u>
<u>CIFO Reference Number: 26-000016</u>
<u>Complainant: Mr S</u>
<u>Respondent: HSBC Bank Plc, Jersey Branch ("HSBC")</u>

The Complaint

The Complainant, whom I shall refer to as Mr S, complains, in summary, that HSBC failed to protect his account from fraud when he made online payments totaling more than £24,000 between February and April 2025.

The complaint has been brought on behalf of Mr S by his daughter, Mrs A, who, jointly with her sister, holds power of attorney.

Background

In February 2024 Mr S executed a lasting power of attorney (LPA) in favour of his daughters. The LPA was registered with the Royal Court on 8 August 2024. It was not registered with HSBC until after the events which form the basis of this complaint.

On 24 February 2025 Mrs A went to a branch to discuss a payment of £400 which Mr S had made from his account. She thought it might be fraudulent. The branch was unable to help, so Mrs A called the bank's fraud department.

In that call, a recording of which the bank provided, Mrs A told HSBC that she held an LPA but that it had not been registered with the bank. The call handler indicated that a note could be added to the account but that Mr S would need to contact the bank himself to report a fraud. Mrs A explained that she believed that her father was the victim of a romance scam. She said that she had identified payments he had made from his account with the reference "Alice". However, when she had raised these with her father, he had not accepted that there was anything wrong. He did not, she said, understand that he was being scammed, even though she had provided him with proof of that.

On 4 March 2025 Mr S tried to make a payment of £350. HSBC's security systems flagged the payment as suspicious and asked Mr S to get in touch to confirm the payment was genuine. When he did not do so, the payment was cancelled. When Mr S told his daughter what had happened, she assumed that the account had been blocked as a result of her telephone conversation with HSBC a few days previously and that the payment had been stopped as a result. In fact, the payment had been flagged by the bank's security systems as an individual payment which appeared suspicious. There was no wider restriction on the account, either as a result of what Mrs A had told HSBC or otherwise.

Mr S continued to make payments with the reference "Alice" until HSBC became concerned at comments he made when he attended in branch on 25 April and intervened. By that time, Mrs A says payments totalling £24,116 had been made, of which £23,666 had been made after the telephone call of 28 February. Money had been transferred from Mr S's savings account to fund the payments from his current account.

The adjudicator's assessment

Mrs A complained to HSBC, but it refused to reimburse the losses. Mrs A then complained to CIFO, where an adjudicator considered what had happened.

The adjudicator said that, from 1 April 2025, the payments appeared to be out of character and that the bank ought to have carried out further checks before completing them. Had it done so, she thought it was more likely than not that Mrs A would have used her authority granted by the LPA to protect Mr S's account. She recommended that HSBC reimburse the amount of these payments totalling £18,151 and pay interest on the payments from the date each was made until settlement.

Neither HSBC nor Mrs A accepted the adjudicator's recommendation. HSBC made further submissions, which I summarise below:

- It is limited in the action it can take when it receives information about a customer's account from an unknown third party. This is why it was unable to take action following Mrs A's initial report. It did highlight to Mrs A the steps she could take to intervene with an LPA and noted that she did not follow these steps until May 2025.

- It did not accept that it was reasonable to assume that an intervention by the bank would have led to Mrs A registering the LPA with the bank.
- Mr S would have received fraud warnings when making the payments online.

When issues were picked up in branch on 25 April Mr S's accounts were blocked and a face to face meeting was held with Mr S and the police, but Mr S did not believe he was the victim of a fraud. At that point the block on Mr S's current account was released but the block on his savings account remained as a precaution. According to Mrs A's schedule, the final payment using the "Alice" reference was made on 15 April 2025. Mrs A has since registered the LPA with the bank and the account has been closed.

My provisional decision

Because neither HSBC nor Mrs A accepted the adjudicator's recommendation, the case file was passed to me for further consideration. Because I was minded to reach a decision which differed in some respects from the adjudicator's assessment, on 29 April 2026 I issued a provisional decision. In that provisional decision, I said:

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

Having done that, my current view is that I am likely to reach a conclusion which differs in some respects from that reached by the adjudicator, both in some of its reasoning and in the amount of my award – which is likely to be more than the adjudicator recommended.

My starting point is that it is the bank's principal duty to make the payments its customers ask it to make. Banks in Jersey are also under a regulatory obligation to have systems and procedures in place to prevent fraud. Mr S's account in Jersey is subject to regulations set out by the Jersey Financial Services Commission (JFSC). Principle 2 of the JFSC's Code of Practice for Deposit Taking Business (also known as the Banking Code) which requires a bank, amongst other things, to act with "due regard for the interests of its customers". The Jersey Banking Code also requires banks to have systems in place to "guard against involvement in financial crime".

In this instance, there is no dispute that the payments were made as a result of a genuine instructions given by Mr S. This was not, for example, a case where someone was impersonating him or where his log-in details had been compromised. And the payments made were for the amounts instructed by Mr S and were made to the account(s) of which he provided details.

In carrying out a customer's instructions, however, a bank should act with reasonable care and skill. In some cases, that can mean it should go further than simply following instructions correctly; it should not, for example, ignore obvious indications that the customer does not understand what they are doing. Such indications might include, but are not necessarily limited to: frequent payments to the same recipient; payments unconnected to purchases; larger payments than usual; and payments which increase in frequency and size. Of course, genuine payments might also have one or more of those features.

The adjudicator took the view that, from 1 April 2025, the payments made were so unusual and were of such amounts that HSBC ought to have been on notice that there was a real possibility that, whilst Mr S had made them, they were nevertheless fraudulent. I am inclined to agree with that assessment; a payment of £2,000 on 1 April 2025 was the first for more than a few hundred pounds.

I would, however, go further than that. In the telephone call of 28 February 2025 Mrs A explained clearly that she thought her father had been targeted by fraudsters and was the victim of a romance scam. Such scams are, unfortunately, not uncommon. They would certainly be familiar to anyone working in the fraud department of a major international bank. And I note that Mrs A was sufficiently familiar with them that she used the term "romance scam".

Mrs A also said that her father did not accept that he was the victim of a fraud and that he did not understand that he was being scammed. That, as the bank would have known, is a very typical characteristic of a romance scam. The fact that Mr S had not reported any payments as fraudulent was not, in my view, a reason for HSBC not to take action to protect him. On the contrary, the fact that he did not believe he had been targeted was consistent with the nature of a romance scam.

I accept that HSBC could not act directly on Mrs A's instructions, since she had not registered the LPA with the bank at that point. She explained that she was reluctant to do so, since she did not want to act against her father's wishes or to take control away from him while he still had mental capacity *and before he had asked her and her sister to do so. I can understand her reasons for taking that view, although in the circumstances it may have been better if the attorneys had taken over conduct of the account at that point.*

But, whether or not HSBC was able to take instructions from Mrs A about the operation of the account, her call at the very least put it on notice that there was a real possibility – perhaps even a probability – that Mr S had been targeted by fraudsters. Mrs A had not only told the bank that she was concerned about her father's vulnerability, but she had also explained the nature of her concerns and had provided sufficient information to enable the bank to identify payments which were likely to be fraudulent. All the payments to scammers were referenced "Alice" – followed by a full name of someone else (many of which were repeated).

The disputed payments made from the account in March 2025 were frequent but for relatively low amounts – no more than a few hundred pounds. So, but for the telephone call of 28 February 2025, I might have concluded that they did not give grounds for any suspicion. However, that call put HSBC on notice that it was likely Mr S had been targeted. The bank did not have to act on that warning, of course, but if it did not do so, it ran the risk that it was not doing enough to address Mr S's vulnerability.

For these reasons, I am currently minded to make an award in Mr S's favour requiring the reimbursement of all payments made from his account on or after 1 March 2025 with the reference "Alice". HSBC should also pay interest on those sums.

Mrs A has also said that four card payments were made from the account between 12 and 14 May 2025, even though the account was blocked. She has not suggested however that those payments had not been authorised or that her father did not receive the goods or services to which they related, so I do not intend to make an award in respect of them.

Responses to my provisional decision

Mrs A indicated that she accepted my provisional findings, but she also explained why she had not registered the LPA with the bank sooner than she did. She said that her father had asked her not to intervene in his affairs and that, whilst he still had mental capacity, he could have revoked the LPA. There was a conflict between acting in line with his wishes and acting in his best interests.

Mrs A also noted that the bank had a duty to act with reasonable care and that it was on notice that there was a fraud concern.

HSBC also made further submissions. In summary, it said:

– Its duty to make payments as instructed was strict; it had no duty to assess the purpose or risk of a payment.

– It did not agree that Mrs A's call of 28 February 2025 put it on notice that there was a risk of fraud. Even it had blocked the account then, Mr S did not accept that he was the victim of scam.

– It had no more than a third party suspicion of fraud, with no evidence. Mr S had not made any fraud report, and he was clear that there was no fraud.

– Mrs A failed to take steps to mitigate her father's losses, which she could have done by registering the LPA and taking control of his account. She had also failed to act in her father's best interests, as required by the Capacity and Self-Determination (Jersey) Law 2016.

Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

Having done so, however, I have not changed my view from that set out in my provisional decision.

I think it is apparent from what Mrs A has said in bringing this complaint that she and her sister faced something of a dilemma. Mr S still had mental capacity but was making unwise financial decisions. Mrs A was under a duty to act in line with his wishes, but also wanted to act in his best interests.

However, all of that was also clear when Mrs A contacted HSBC in February 2025. The transcript of that call indicates that it was already possible that Mr S did not understand what had been happening.

HSBC's response to Mrs A's concerns did not, in my view, sufficiently take into account the wider background. Whilst I accept that it could not act on her instructions, I remain of the view that her concerns, when combined with other indications, should have put it on notice that there was a real risk that Mr S was a fraud victim.

In saying that, I note that Mrs A had already reported her concerns at branch level and had been sufficiently concerned to involve the police.

In addition, HSBC's own security systems flagged a payment to "Alice" on 4 March 2025. Those systems then asked Mr S to confirm that the payment was genuine. He didn't do so, and, when the payment was not made, he didn't contact the bank to ask why it had been stopped. In my view, the lack of contact from Mr S at that point was entirely consistent with what Mrs A had said about the payments to the same recipient. It was itself an indication that Mr S might be a victim of a scam.

The fact that HSBC was able to, and did, stop a payment demonstrates too that its duty to follow Mr S's payment instructions was not a strict one. There were circumstances in which it could decide not to do so.

In my view, in making payments after the telephone call of 28 February 2025, HSBC did not act with the reasonable care and skill required of it.

Final decision

For these reasons, my final decision is that, to resolve Mr S's complaint in full, HSBC should refund the payments identified above, together with interest at 8% from the date of payment to the date of reimbursement. It should also refund any charges on the account from 1 March 2025.

Mike Ingram
Ombudsman

Date: 17 June 2026