

The complaint

Mr D is unhappy that HSBC UK Bank Plc hasn't helped him get back money he says he lost to a scam.

What happened

Mr D found a car for sale online and contacted the seller. He believed the car was being sold by a dealership I'll refer to as B. He arranged to see the car and was given an address. He met up with the seller as planned and decided to go ahead with the purchase. That was on the basis that he was told the car was in good working order and that a number of problems had recently been repaired. Along with the car he was promised a six month warranty.

Mr D paid for the car by way of bank transfer and sent £3,000 to the account details provided on 10 November 2019. The car was delivered to Mr D's address and he updated the registration with the DVLA.

Mr D didn't drive the car right away as his wife was in hospital. But once he did start driving it, he noticed some problems. In particular, there was something wrong with the gearbox and there was a warning message on the dashboard which told Mr D to take the car to a garage.

The warranty for the car also hadn't been provided by the seller at this stage and so Mr D was chasing it up. It was eventually provided but when Mr D tried to use it to cover the repairs the car needed, the warranty company said it wasn't valid as it was purchased after the problems developed.

Mr D was unhappy with the car and the situation overall and so he started to pursue the seller for a refund. But the seller began ignoring Mr D and he couldn't get in touch with them. Mr D looked online for different contact information for B and found an alternative phone number. But when he got in touch B said it hadn't ever sold him a car and it had never received any money from Mr D.

Mr D was also in contact with the warranty company and it suggested that B hadn't paid for the warranty; a company with a different name had.

At this point Mr D thought he'd been scammed given the car wasn't of satisfactory quality and the seller of the car seemed to have hidden or lied about who they were. He contacted HSBC and told them he'd been the victim of a scam.

HSBC looked at what had happened and contacted the bank Mr D sent the money to, in an attempt to recover it. But the receiving bank said all the money had already been withdrawn from the account. HSBC said it couldn't do any more as it believed Mr D had a dispute with the seller over the quality of the goods he'd received; it didn't think he'd been the victim of a scam. It said it wouldn't refund any of the money he'd sent for the purchase of the car.

Mr D was unhappy with the bank's response and brought his complaint to our service. He still felt he'd been scammed and also said that the bank ought to have told him that the name on the receiving account didn't match the name he intended to pay.

One of our investigators considered the complaint and didn't recommend it be upheld. She believed Mr D had a civil dispute with the seller about the quality of the car, rather than it being the case he was the victim of a scam. And she didn't think there was anything more the bank ought to have done.

Mr D disagreed and so the case has been referred to me for a final decision.

What I've decided – and why

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

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 be good industry practice at the time.

There's no dispute about whether the payment was authorised. Mr D willingly made the payment for the car and knew what he was doing. And so the starting point is that he is responsible for it, as per the Payment Service Regulations 2017 and the terms and conditions of his account.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model, which HSBC has signed up to and was in force at the time Mr D made the payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam. I've thought about if the CRM code applies in the circumstances of the payment Mr D made and, in particular, whether HSBC ought to reimburse him under the provisions of the Code. But the Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint

I am of the view that Mr D's payment is not one where the CRM Code applies because I'm satisfied it is a civil dispute rather than a scam.

The main reason I've made this finding is because Mr D has received the goods he paid for, including the warranty. The issue is that the goods aren't of a satisfactory quality, an issue clearly stated as not being catered for within the CRM Code. Had Mr D not received the car at all, or had it been vastly different to what he ordered, the outcome might have been different. But as the problems come down to the condition of the car that was ordered and delivered I can't say Mr D has been the victim of a scam.

I can see why Mr D feels differently. There appears to have been some misrepresented and misleading information given to him, along with very poor service from the seller. But that isn't enough for me to conclude Mr D has been scammed. He has still received the goods he paid for, albeit that the car isn't of satisfactory quality.

The fact that the seller did go on to provide the warranty once the purchase had been made also doesn't point this to being a scam. I wouldn't have expected the seller to look to complete the agreement if they were intending to steal money from Mr D.

Mr D has clearly been treated poorly by the person(s) that sold him the car. But I don't find the circumstances point to him having been the victim of a scam and so the CRM Code doesn't apply to the payment made.

Mr D has said HSBC informed him that the name on the receiving account didn't match the payee name he gave on his payment instruction. And he feels HSBC shouldn't have allowed the payment to go through if the names didn't match.

I've listened to the call in which Mr D raises his scam claim and the bank doesn't tell him the name of the recipient account holder or that it didn't match his payment instruction. Mr D does ask about this and he says that he is aware of these details being checked in other countries. But the bank adviser only says that the payee name wouldn't have been checked as it wasn't a requirement and the bank wouldn't have had access to the information. What the bank said there was true at the time, with changes having been made to how payments are processed having now been brought in. And so the bank did nothing wrong in allowing the payment to go through.

I've not seen evidence to show that the bank is, or ever has been, aware that the payee name didn't match. I know Mr D has asked for the details of the payee but the bank doesn't appear to have that information to share. And even if it did, it wouldn't be able to pass this information on to Mr D. There are some situations where it might be able to, if Mr D had accidentally paid the wrong account for example. But that's not what happened here.

Mr D has said this leaves him in a situation where he's not able to pursue a civil dispute in court because he doesn't know who to file one against. And I can understand his frustration here. He might consider contacting the receiving bank directly to see if it can help. Or he could perhaps reach out to the DVLA who should have the details of the previous registered keeper, if those aren't already given on the VC5 document provided with the car. But it's not for HSBC to provide the payee details to him.

The only area where I find the bank perhaps ought to have done more is at the point Mr D was making the payment. The bank appears to have flagged the transaction as suspicious and so it contacted Mr D to verify it. He was taken through some security questions and asked to confirm it was him that was making the payment. There was also questioning that aimed to ensure Mr D was engaging in a legitimate purchase, to the extent that the advert was genuine, the car did exist and the person selling it had the right to sell it. That's because the bank will have been aware of scams where fake adverts for the sale of cars are posted and customers send money to buy them but then never receive the car. If the bank had concerns about what it was being told then a strong warning about scams ought to have followed, with the customer encouraged to carry out more checks to establish the legitimacy of the purchase.

But here Mr D had been to see the car and had done a lot to verify the purchase. And we know that Mr D did receive the car, so there wasn't much more the bank could have done here.

The one concern I have is that the bank indicated to Mr D that one of its other customers had raised a fraud claim against the same payee (identified by the account number and sort code). But it didn't really explain a great deal of detail here or what it meant when it really ought to have done. I think it was fairly clear, having listened to the call, that Mr D didn't fully understand what he was being told. And the detail provided by the bank was quite limited.

I'm not persuaded, however, that it would have made a difference if the bank had been able to share more information. Mr D was confident of the legitimacy of the purchase given he'd been to see the car and everything seemed above board. And so it seems more likely than not he would have proceeded in any case.

In conclusion, I'm satisfied Mr D isn't due a refund under the CRM Code. Nor can I see there are other grounds on which I could say that HSBC should, fairly and reasonably, bear any responsibility for Mr D's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 April 2021.

Ben Murray
Ombudsman