

## **The complaint**

Mrs B complains that HSBC UK Bank Plc won't refund money she lost when she fell victim to a scam.

## **What happened**

In June 2019 Mrs B fell victim to a scam.

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mrs B was looking to buy a car. She's told us that after comparing cars on a number of auction sites, she found one she was interested in, from a company that she thought specialised in repossessed vehicles.

Mrs B contacted the company and expressed an interest in buying the car and, after exchanging a number of emails, Mrs B agreed a price of £6,700. The company told Mrs B that payment for the vehicle would need to be made to an Escrow account. It explained to Mrs B that she would be the account holder of the temporary Escrow and it would be in her name. They told her it was like sending money to herself, with the money being held until Mrs B had the opportunity to inspect the car. Mrs B's understanding was that, if after inspecting it, she was not happy with the car, her money would be released from the Escrow back into her bank account.

Mrs B has told us that she also carried out a search of the company through Companies House, she's said she did this as it was a large purchase and she hadn't heard of the company, so she wanted to ensure everything was above board. On checking she said she found that it was a legitimate company, that had been active since 2013. Alongside this she said she checked the Financial Conduct Authority (FCA) website and conducted a Google search, and couldn't see any warnings for the company.

Believing everything to be genuine, on 26 June 2019, Mrs B went ahead and made a payment for £6,700 to the account details provided. But unknown to her at the time, she was dealing with fraudsters, who had cloned a legitimate company's website. Mrs B became suspicious when the vehicle didn't arrive. She contacted the company via the details provided on Companies House and got through to the legitimate company, who informed her they had received other similar calls about people who had been scammed and that the matter had been referred to the police.

Realising she had been the victim of a scam Mrs B contacted HSBC on 1 July 2019. HSBC has said it contacted the receiving bank (the bank who the money was sent to), but no funds remained.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP

scams like this in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case.

HSBC looked into Mrs B's complaint and made an offer to refund 50% of the amount Mrs B had lost. It said that it could have done more to protect and advise Mrs B before she made the payment, but thought Mrs B also could have taken more responsibility and conducted more checks prior to making the payment.

Mrs B then brought her complaint to our service and one of our investigator's looked into things. Our investigator thought the complaint should be upheld. In summary she didn't consider HSBC had been able to establish that Mrs B did not have a reasonable basis for believing she was making a legitimate payment. She said this because Mrs B had conducted research on the company before making the payment, and could see it was a legitimate company that had been active since 2013. She added that Mrs B had seen what she thought was a professional looking website and she was under the belief that the money she paid was being held by a third party company, which she would receive back if there was anything wrong with the vehicle. Overall, our investigator was persuaded this was a very sophisticated scam and she didn't think Mrs B ought to have done anything further to check the legitimacy of the company before proceeding.

HSBC disagreed strongly with our investigator's findings. It didn't accept that it should be held liable for the entirety of the sum lost. In summary HSBC said this because;

- It strongly disagreed with our investigator's position that Mrs B had a reasonable belief that the payment was for genuine goods and that the person with whom she was transacting with was legitimate. It said applying the CRM code, it didn't consider Mrs B had met her requisite level of care and she should share some of the responsibility for the loss.
- It felt Mrs B had failed to take "reasonable and appropriate steps" to protect herself from fraud and had failed to carry out adequate research, so as to appraise herself of an appropriate valuation for the vehicle. It added that Mrs B didn't do any checks with the DVLA to establish who the owner of the car was, or if there were any outstanding funds.
- It said Mrs B did not see the car in person before purchasing it, which it said was standard before purchasing a car and that Mrs B had made a full payment, rather than paid a deposit.
- Mrs B had made the payment through an Escrow, but had gathered no proof of this.

It concluded that Mrs B did not meet the requisite level of care – or that she was grossly negligent in her actions and beliefs.

As no agreement could be reached, the complaint has been passed to me for a 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual

point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded Mrs B the full amount she lost. And I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- I understand Mrs B has already been refunded 50% of the loss (£3,350) by HSBC. In the circumstances, HSBC should refund the remainder of the money she lost.
- The payment was made from Mrs B's current account. It is not clear if or when Mrs B would have used the money to buy a different car. As is not clear how she would have used the money if HSBC had refunded it when it should have done, HSBC should pay interest on the remaining amount it should have refunded at 8% simple per year from the date it partially declined her claim to the date of payment.

I have carefully considered HSBC's representations that Mrs B did not have a reasonable basis for believing she was making payments to a genuine source, but they do not persuade me to reach a different view. In particular, I'm not persuaded Mrs B failed to take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code.

In reaching my decision, I've had regard to the scene that was set by the fraudster and the impact I believe this reasonably had, in all the circumstances, on Mrs B's thoughts and actions. In this case I'm satisfied that HSBC has not shown that Mrs B lacked a reasonable basis of belief. I'll explain why.

This is a particularly sophisticated scam where a legitimate dealership has been cloned by fraudsters. Considering she was making a large payment, Mrs B has said she wanted to check the company out before proceeding and so she checked the company through Companies House and through the FCA. I can understand why, when these checks didn't highlight any concerns, she proceeded in the belief she was dealing with a legitimate company.

I accept in the circumstances of this case Mrs B could have potentially carried out further checks, for example an HPI or a DVLA check, but I don't think this would have made a difference in the circumstances of this case. I say this because this was a highly sophisticated scam where fraudsters had been able to clone a genuine company. I think with the level of sophistication that was in play here, it's more likely than not any HPI or DVLA checks wouldn't have raised any alerts, as it is often the case with these types of sophisticated scams that fraudsters are able to provide their victims with details for legitimate vehicles, which have no adverse data against them.

HSBC has said Mrs B failed to appraise herself of an appropriate valuation for the vehicle. I can appreciate, especially with the knowledge that this later transpired to be a scam, that the advertised price for this particular car was below what a buyer might typically expect to pay for it. And I accept that a low price can be an indicator that a situation is not what it seems. But here I'm persuaded Mrs B was given a reasonable explanation as to why the price was low. She thought that she was buying a car from an auction site that dealt with repossessed vehicles, which is why she believed she was getting it at a low price. And in the context of Mrs B believing, with the checks she carried out, that the whole situation was plausible, I'm

persuaded that it was fair and reasonable, in the circumstances of this case, for Mrs B to have proceeded with the payment.

I've also thought about whether Mrs B ought reasonably to have viewed the vehicle before making the payment. The distance between Mrs B's home and where the car was located was almost 200 miles, so I'm persuaded this was too great a distance for viewing the car to be realistic. And Mrs B proceeded on the understanding her payment was going to be 'held' in an account in her name. Where she could readily get fully reimbursed if she didn't want the vehicle after inspecting it. On balance and considering the circumstances of this case, I think it fair and reasonable that Mrs B didn't view the vehicle and that she was reassured that she would get her money back if there were any problems.

I'm also mindful that Mrs B made the payment, in the belief, following the checks she had carried out, that she was dealing with a legitimate company. I'm not persuaded the average customer would understand that a fraudster would be able to clone a legitimate website. This means that a customer wouldn't be able to appreciate the risk that they might not be dealing with a genuine organisation, especially when they have carried out checks which suggest otherwise.

Overall, for the reasons I've explained above and in the absence of Mrs B having the knowledge of what these types of scam looked and felt like, I think the actions she took before progressing with her payment were reasonable.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I'm not satisfied HSBC has been able to establish that when Mrs B sent the payment, she did so without a reasonable basis for belief.

### **Putting things right**

The Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost. So, I think it's fair that HSBC should now;

- refund the remaining money Mrs B lost (being £3,350)
- pay interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date HSBC declined Mrs B's full claim under the CRM to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 March 2022.

Stephen Wise  
**Ombudsman**