

The complaint

Mr K is unhappy HSBC UK Bank Plc will not refund all of the money he lost after falling victim to a scam.

What happened

On 21 March 2020, Mr K saw a used Range Rover Evoque advertised for sale by a private seller on a social media online marketplace. The seller said the car was registered in the UK, free of finance and in excellent condition for its age with a full service history and low mileage.

Mr K explains that he had used this marketplace before successfully to buy other items. As he was interested in the car, he contacted the seller. The seller told him that they had recently relocated abroad and had found the car to be unsuitable as it was a right hand drive model. The seller explained they had tried to sell the car locally but there had been no interest, so they had decided to advertise it for sale back in the UK. The seller explained that the car was currently in storage abroad, but the logistics company handling shipping and payment would be able to deliver the car anywhere within the UK.

The seller told Mr K that the final price would be £6,840 including shipping and all transaction related fees. She explained that Mr K would need to pay the logistics company directly and that he would have a 10 day inspection period where he would be able to get a full refund if he wasn't satisfied with the car's condition.

Mr K asked the seller for the car's registration number. He explained that he checked the details of the vehicle on the Driver and Vehicle Licensing Agency website and checked the car's MOT history, along with a basic HPI check which came back clear. Mr K also explained that he checked the status of the logistics company on Companies House and visited its website which he says felt authentic.

On 6 April 2020, Mr K used his online banking to make a payment of £6,840 to the details he'd been given for the logistics company. He was expecting the car to be delivered on 13 April 2020.

Mr K has explained he was aware that the car was advertised at a "*great price*" but he did not think it was concerning in all the circumstances. He suggested that there has been a general drop in the price for diesel cars and pointed to the planned extension of London's low emissions zone to support this. He highlighted that he thought the seller was motivated to sell for their own personal reasons. Mr K suggested that he has been able to obtain some very good deals in the past by being "*in the right place at the right time.*" He referred to securing substantial discounts online for goods and services in the past and suggests that he has an "*eye for getting a bargain.*"

Unfortunately, on this occasion Mr K was dealing with fraudsters. He didn't receive the car and was unable to make any further contact with the seller or the logistics company. When Mr K realised he'd been tricked, he contacted the bank and Action Fraud for help.

HSBC contacted the receiving bank but was unable to recover any of the money Mr K had sent. It also considered whether it ought to refund Mr K for his loss.

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.

When HSBC considered the matter, it made an offer to refund 50% of the amount Mr K lost. It said he could have done more to check if it was a genuine sale, such as inspecting the car in person and checking its logbook to ensure it matched the vehicle and the seller. It suggested that Mr K could have asked the shipping company he believed he was dealing with to take payment another way, such as by a credit or debit card. Mr K brought his complaint to our service as he wasn't happy with HSBC's decision. He thought HSBC should have refunded all of the money he'd lost.

One of our investigators looked into the complaint and recommended it be upheld. She concluded that HSBC should have fully reimbursed Mr K under the CRM code. She did not consider HSBC had been able to establish that Mr K did not have a reasonable basis for believing he was making a legitimate payment. She explained that Mr K had no reason to be suspicious of the shipping company and pointed out that the checks he'd made into both the vehicle and the logistics company showed no anomalies. She was persuaded that Mr K did enough to ensure he was purchasing a genuine vehicle and communicating with a genuine seller.

HSBC responded to say it strongly disagreed with our investigator's position that Mr K had a reasonable belief that the payment was for genuine goods and that the person with whom he was transacting with was legitimate. It said he should "*rightly bear some responsibility for his loss.*" It felt Mr K had failed to take "*reasonable and appropriate steps*" to protect himself from fraud.

It suggested Mr K had failed to carry out adequate research as to the appropriate valuation for the car and suggested that the price was "*unrealistically low*" and "*well below market value for this particular model.*" It pointed out that even in poor condition the vehicle should be worth in the region of £12,000. It suggested Mr K was "*blind to this information in his desire to secure a bargain.*" It pointed out that Mr K had not undertaken any checks on the seller and the steps he had taken were not sufficient to show the purported seller had ownership of the car. It concluded that Mr K did not meet the requisite level of care – or that he was grossly negligent in his actions and beliefs.

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

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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded the full £6,840 Mr K lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- I understand Mr K has already been refunded 50% of the loss (£3,420) by HSBC. In the circumstances, HSBC should refund the remainder of the money he lost.
- The payment was made from Mr K's current account. It is not clear if or when Mr K would have used the money to buy a different car. As is not clear how he 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 his claim to the date of payment.

I've carefully considered the bank's representations about whether Mr K had a reasonable basis for believing the transfer was for a legitimate purchase. But they do not persuade me to reach a different outcome. In particular, I am not persuaded that Mr K failed to take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code. And, for completeness, I'm also satisfied that Mr K did not act with gross negligence.

In reaching this decision, I've had particular regard to the scene that was set by the fraudster and the impact I believe this reasonably had, in all the circumstances, on Mr K's thoughts and actions. This was a sophisticated scam. The fraudsters cloned a genuine advertisement and a genuine logistics company. I've seen copies of the messages Mr K exchanged with the fraudsters and they look and feel how genuine interactions of this nature typically would. This makes it much more difficult for the average consumer to obviously spot that they aren't interacting with a legitimate seller.

HSBC has placed a lot of emphasis on the price of the car and how it was "*self-evident that the price of the Vehicle was too good to be true.*" I can appreciate - especially with the knowledge that this later transpired to be a scam - that the advertised price for this particular car was considerably 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 I think HSBC needs to consider the price of this car in the wider context of the situation as Mr K understood it to be at that time.

Mr K found the car advertised on an online marketplace. Marketplaces are an increasingly common way for private sellers to sell items they no longer want, use or need. The seller can set a price that they are comfortable with, which doesn't necessarily have to be the item's market value. A seller might well be motivated to accept a lower offer than what an item might typically be worth if they need a quick sale.

That being said, the seller's price was a considerable reduction compared to the expected market value. But Mr K has explained why he thought the overall situation was plausible. He's said the fraudster's story about relocating and struggling to sell the car made it look like they were desperate to sell quickly. Mr K thought the seller's situation sounded credible and I don't think this was unreasonable of him.

I'm also mindful that Mr K's decision to proceed with the deal was not based on price alone. He was in regular communication with both the seller and the logistics company and those interactions did not raise any concerns.

Having seen copies of the correspondence Mr K exchanged, I think it was reasonable for him to think he was dealing with a genuine seller and logistics company.

Mr K also checked details of the car on official government websites, and on a vehicle data website. HSBC has seen copies of the information Mr K obtained from the checks he made and the bank does not dispute that the results he obtained were consistent with the information he'd been given by the fraudster.

HSBC has indicated that it considers the checks to have been too basic as they only confirmed the car's existence and were insufficient to confirm the purported seller's connection to the car. It has suggested Mr K should have checked the car's logbook to ensure that the purported seller had ownership of the vehicle and checked the car's identification number to ensure there were no irregularities.

HSBC has far superior knowledge of what scams like this look and feel like so it's not surprising that it can think of further steps and checks that Mr K could have taken to try and protect himself. Mr K has explained that he proceeded with the transaction after being satisfied with the communication with the seller and after he'd undertaken his own research.

People don't want or expect to be scammed and I think Mr K took reasonable and appropriate steps to try and protect himself before making the payment. The fact that the bank can think of additional things Mr K could have done does not mean that he did not do enough. I'm also mindful that HSBC ought to be aware that fraudsters often use details of genuine vehicles so that even further checks aren't guaranteed to show up concerns.

Mr K has said that he is frustrated that HSBC expected him to do more given that he checked what he could, especially as the sale took place during the global pandemic lockdown so the bank's suggestion that he should have inspected the car in person was not feasible. He's said that he feels *"saddened by the experience"* and that he did what he could *"in good faith."*

The CRM Code is designed to give people that have fallen victim to an APP scam the confidence that they will be reimbursed if they have acted appropriately. In all the circumstances of this complaint, I am not persuaded that Mr H's failure to make the additional checks that HSBC believes he could have done, or actions he could have taken, should have led it not to fully reimburse him under the terms of the CRM Code.

Overall, at the time Mr K made the payment, I'm persuaded he had a reasonable basis for believing that the payee was the person he was expecting to pay; the payment was for genuine goods or services and the person with whom he transacted was legitimate.

Putting things right

I've decided that Mr K met his requisite level of care under the CRM Code and ought reasonably to have been fully refunded. I therefore direct HSBC to pay Mr K:

- the remainder of the money he lost as part of the scam - £3,420 – within 28 days of receiving notification of his acceptance of my final decision; plus
- interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date HSBC declined Mr K's full claim under the CRM to the date of settlement.

My final decision

I uphold Mr K's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 June 2021.

Claire Marsh
Ombudsman