

The complaint

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

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that, in September 2020, Miss F was called by a fraudster pretending to be from HMRC.

Miss F was told by the fraudster that she owed tax and was threatened with arrest if she didn't pay the outstanding sum due. She was told there were five allegations of tax avoidance against her and that she had the options of either paying a fine (in which case things would be put down as an honest mistake) or to go to court and risk further fines or going to prison. Miss F has said she mainly spoke to two people, one of whom claimed to be a lawyer working for HMRC.

Miss F has said that when she received the call she was directed to check the number on a gov.co.uk website and it was the same number. She's told us that during that year she had set up a limited company, but hadn't yet registered for Corporation Tax or filed her first accounts, so she thought it might be correct that there were taxes due. But unknown to her at the time, she was speaking to fraudsters.

Believing things to be genuine Miss F went ahead and made payments in line with the fraudster's instructions. After making an initial payment, Miss F continued to speak to the fraudsters, who sent her letters, via an instant messaging platform, on what appeared to be HMRC headed paper detailing further payments that were due, for court fees, along with images of the HMRC website which appeared to indicate that Miss F would later receive a refund.

Miss F made a number of transfers from her HSBC account, to accounts she held in her name with other payment service providers, and from there she transferred funds to accounts controlled by the fraudsters (these payments do not form part of the complaint Miss F has brought to this service against HSBC). But, Miss F also made the following two payments to the fraudsters, directly from her HSBC account. It is these payments that are being considered in this complaint;

18 September 2020	£999
18 September 2020	£1,600

The scam came to light when Miss F later made a call to the number the fraudster had appeared to call her from. But the call went straight through to a genuine HMRC member of staff and when Miss F ask for the fictitious name (that the fraudster had given her), it came to light that there was nobody by that name at HMRC and at this point Miss F realised she had been scammed.

Miss F raised the matter with HSBC. HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM code) which requires firms to reimburse customers who have been the victims of authorised push payment scams like this, except in limited circumstances. HSBC investigated Miss F's complaint and issued its final response in November 2020, not upholding the complaint. In summary it didn't accept liability as it said it provided sufficient fraud warnings before Miss F made the payments. Alongside this it thought Miss F could have done more to check she was genuinely dealing with HMRC.

Unhappy with HSBC's response, Miss F then brought her complaint to our service and one of our investigator's looked into things. She thought the complaint should be upheld and that HSBC should refund the money Miss F had lost, along with interest (our investigator updated both Miss F and HSBC with an amended redress amount after issuing her view). In summary, our investigator didn't consider the warnings HSBC had given were impactful and she thought this was a sophisticated scam and very believable to Miss F, so she had a reasonable basis for believing it was HMRC that had called her.

HSBC didn't agree with our investigators view. In summary it said that it didn't think a call coming through on a spoofed number is enough to validate that the request for payment is genuine. It added that the documents were sent to Miss F through an instant messaging platform and this isn't how you'd expect an organisation such as HMRC to communicate. HMRC also maintained that it had issued an effective warning.

As agreement couldn't be reached the complaint has now 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 as a free alternative to the courts.

Having considered everything, I'm satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded Miss F the full amount lost. And I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances HSBC should fairly and reasonably now refund Miss F the money she has lost.

I have carefully considered HSBC's representations about the warnings it gave and whether the consumer had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach a different view. In particular I am not persuaded that Miss F failed to take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code. I'll explain why;

Effective Warnings

Under the provisions of the CRM Code, as a minimum, an “effective warning” needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams.

HSBC has provided copies of warnings that Miss F would have seen and it has explained she would have seen two different warnings, as a result of her selecting two different payment purposes when making the respective payments. Those selections being;

‘Unexpected request from Bank/Police/Organisation’ for one of the payments and *‘Paying friends and family’* for the other payment. The two warnings displayed were as follows;

When selecting *‘Unexpected request from Bank/Police/Organisation’*;

‘Fraudsters can pretend to be from places you trust, like your bank, the police or HMRC. They can call from a number that appears valid when checked. If they ask you to move your account or repay an overpayment, it could be a scam.’

‘If you’re not sure, hang up and call the contact number on your card or an official phone number. We may not be able to recover payments that turn out to be fraudulent.’

When selecting *‘Paying friends and family’*;

‘Fraudsters can pose as friends and try to get to know you through social media. They then ask for money to help with emergencies. Take time and talk to someone you trust before sending the money. We may not be able to recover payments that turn out to be fraudulent.’

Miss F would then have to click continue in order to confirm the payment.

The CRM Code sets out minimum criteria that a warning must meet to be an ‘effective warning’. In very broad terms, it requires that a warning will be capable of countering the typical features of the generic scam type identified during the payment journey. I appreciate that the warnings HSBC gave were, in part, relevant to the type of scam Miss F fell victim to, in that they do mention HMRC. But I don’t think they were impactful enough to affect a customer’s decision making in a manner whereby the likelihood of this scam succeeding was reduced.

I don’t consider either of the warnings here constitute an ‘effective warning’ for the following reasons:

- I appreciate the first warning detailed above mentions the consequences of proceeding; in that it warns the funds might not be recoverable and it mentions HMRC and that the number calling may appear valid. But the warning doesn’t talk about or explain about number spoofing, which is often a hallmark of these types of scams.
- The warning also isn’t specific to the type of scam Miss F is falling victim to. While it mentions HMRC, it then talks about fraudsters asking victims to move accounts or repay an overpayment. These are hallmarks more typical of safe-account scams and not specific to the circumstances of the scam Miss F fell victim to.
- The warning also doesn’t provide any context on how prevalent these types of scams are. For example, it doesn’t stress how the fraudsters will apply pressure and often

give threats of criminal action. And while it does mention calling an official number, it doesn't give context as to why this is so important, against an alternative check that a consumer may consider/be coached to do that wouldn't uncover the scam (such as checking a website, as was the case here with Miss F checking the number online).

- The warning also references an overpayment. Here Miss F wasn't being asked to pay an 'overpayment'. She was being asked to pay unpaid taxes (and then court fees). So again here, the warning isn't relevant to the type of scam Miss F is falling victim to.

Miss F selected 'paying family and friends' when making the other payment. I accept Miss F assertion that the fraudster guided her through the payment journey and told her which payment option to select. Likely because they knew choosing this option would mean Miss F wouldn't be presented with warnings that more closely mirrored her situation. And therefore the warnings Miss F was shown bore no resemblance to the situation Miss F found herself in. So I don't think the warnings Miss F saw here were impactful and ought to have affected her decision to make the payments.

I don't underestimate the challenge HSBC faces in providing warnings strong enough to break the spell in a sophisticated scam such as this. But the difficulty of meeting that challenge does not mean that the warnings given by HSBC here were sufficient or contained enough clarity to meet the minimum requirements in the CRM Code. Overall, I'm not satisfied the warnings met the requisite criteria here. I don't consider the warnings given were effective warnings as defined by the CRM Code. It follows that HSBC has not established it can fairly apply the exception to reimbursement relating to 'ignoring an effective warning'.

Even though I've concluded the warnings were not effective, I appreciate the warnings did, in part, have some relevance to the scam Miss F fell victim to. So, for completeness, I've gone on to think about whether Miss F reasonably moved past the warnings to proceed with the payment, given the particular circumstances of the fraud that she fell victim to.

Did Miss F have a reasonable basis for belief when making the payments?

I have carefully considered HSBC's representations about whether Miss F had a reasonable basis for believing the transactions to be genuine. But it does not persuade me to reach a different view. In particular I am not persuaded that Miss F failed to take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code and I don't consider Miss F lacked a reasonable basis of belief. I say this because;

- Miss F took steps to verify the caller's identity. She had checked the number she was being called from against the gov.uk website and it appeared to be genuine. The scam used a technique which is likely to be unknown to most people, and clearly was to Miss F – that of number spoofing. Without knowledge that numbers can be manipulated in this way, Miss F would have further reason to think the call was genuine.
- Miss F's circumstances meant a call from HMRC wasn't entirely unexpected. She had set up a limited company earlier in the year and hadn't registered for Corporation Tax or filed her first set of accounts. She had limited experience when it came to taxation matters with her limited company, given she had only recently set it up. So, I don't think it's unreasonable for Miss F to have thought she may have some tax due to be paid.
- Miss F says she was under pressure and panicked. The fraudsters convinced her

that if she didn't make the payments straightaway, she would face court and a potential prison sentence. I think the fraudsters deliberately tried to create fear in the hope it would disrupt Miss F's thought processes and make her more compliant. It's important to consider the actions Miss F took against this backdrop.

- I've thought carefully about what HSBC has said about Miss F receiving messages via an instant messaging service. While with the benefit of hindsight, it might seem less plausible to receive letters from an organisation such as HMRC in this way. It's important to consider this in the context of the specific circumstances of this case. Miss F had already carried out checks that had satisfied her she was genuinely dealing with HMRC, so I don't think it's unreasonable that she may have been less alert to the medium of communication being used. The letters received were also on what appeared to Miss F as legitimate HMRC headed paper, making them seem real to her. And it's important to keep in mind the highly pressured nature of the situation. The fraudster set out to instill fear in Miss F and to cause her to panic. They threatened her with the potential of a custodial sentence. The seriousness of the threats being made is likely to have had a significant impact on her decision making.

On balance, I'm satisfied that when considering all of the circumstances Miss F's response was not unreasonable. I believe that it was difficult for Miss F to think clearly in the moment. HSBC was aware of this type of scam at the time Miss F fell victim to it and by not providing a relevant warning to her at the time, missed an opportunity to protect her from financial harm. In the absence of any warnings on these types of scams from HSBC, Miss F was not alive to the possibility she was dealing with a fraudster and this is another reason why I don't think she acted unreasonably by engaging with the fraudster and making the payments.

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 Miss F sent the payments 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 UK Bank Plc should;

- refund Miss F the money she lost, being £2,599
- pay 8% interest on this amount, from the date it declined Miss F's claim under the CRM Code to the date of settlement.

My final decision

For the reasons set out above, my decision is that I uphold Miss F's complaint against HSBC UK Bank Plc and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 27 June 2022.

Stephen Wise
Ombudsman