

The complaint

Mr P is unhappy because HSBC UK Bank Plc (“HSBC”) declined to refund £1,800 which he lost as the result of a scam.

What happened

The details of the complaint are well known to both parties, so I won’t go into every detail of what happened here. But in summary, both parties accept that in April 2021, Mr P was called by a fraudster pretending to be from the relevant authorities telling him he owed money for taxes.

Mr P received a series of phone calls addressing him by name, which he was told were from the Royal Courts of Justice, and on behalf of HMRC and the police. He was told that he owed unpaid taxes because his employer had made a mistake. The fraudsters told him that if he did not pay them he would be arrested and prosecuted. Mr P said he checked the number that called him through a search engine, and found it was a genuine number for the Royal Courts of Justice. After speaking to the fraudster for some time, and potentially telling them where he worked, Mr P said he also got a call from what appeared to be his employer’s phone number. The person he spoke to claimed to work for his employer and confirmed that errors had been made so if he didn’t pay what was owed, they would get in trouble too. The person he spoke to told him that they would reimburse him once he had paid the taxes.

Mr P said that when he received the call, he had only lived in the UK for around a year and a half and so was not familiar with how taxation works here. He was alone and felt under pressure from the fraudsters – fearing that he would indeed be imprisoned if he didn’t comply with their demands. Believing things to be genuine, Mr P went ahead and made the payments in line with the fraudster’s instructions. He transferred two payments of £900 each to two accounts in two individual’s names – which, when questioned, they told him was being sent to two government officials’ accounts to process.

The scam came to light when Mr P later spoke to a colleague about what had happened, who informed him he may have fallen victim to a scam. Mr P raised the matter with HSBC. HSBC investigated Mr P’s complaint and issued its final response in May 2021, not upholding the complaint. In summary, they didn’t accept liability because they said they had provided sufficient fraud warnings before Mr P made the payments. They also thought Mr P could have done more to check she was genuinely dealing with HMRC.

Unhappy with HSBC’s response, Mr P brought his complaint to our service and one of our investigators looked into what happened. They recommended that the complaint should be upheld, and that HSBC should refund the money that Mr P had lost, along with interest. In summary, our investigator didn’t consider the warnings given by HSBC were genuinely impactful and they thought this was a sophisticated scam and very believable to Mr P, so he had a reasonable basis for believing that official institutions were contacting him about tax he owed.

HSBC didn’t agree with our investigator’s opinion on Mr P’s complaint. In summary they said they could have given a more specific warning about fraud and scams if he had selected that he was making a payment following an unexpected request from a bank, police or other organization – but he selected that he was paying friends and family. Nevertheless, he was still warned to check the payment information through a trusted source. But they did say they

did not agree that they should be held 100% responsible for the loss – which appears to mean that they may not think they did provide an ‘effective warning’ to Mr P. They did maintain that he didn’t do sufficient checks to ensure he was genuinely talking to HMRC or the Royal Court of Justice because he:

- Searched for the phone number online to check its authenticity, which would have brought up numerous warnings from other users that this number was being used to perpetrate scams, but he failed to look at these;
- didn’t call back the institutions himself to verify that he owed taxes;
- wasn’t provided any details about how the tax liability had been calculated or what time period it was allegedly for, nor had he received any letters, invoices or other written records relating to the tax owed;
- didn’t find it suspicious that he was paying two individual customer accounts rather than HMRC; and
- ignored the fact that HSBC weren’t able to verify that the account names matched those Mr P entered when making the payments.

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.

In deciding what’s fair and reasonable in all the circumstances of the 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. In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of their customer’s account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether HSBC should reimburse some or all of the money Mr P lost in line with the provisions of the CRM Code they have signed up to and whether it ought to have done more to protect Mr P from the possibility of financial harm from fraud. There is no dispute here that Mr P was tricked into making the payments. But this is not enough, in and of itself, for Mr P to receive a refund of the money under the CRM Code. The Code places a level of care on Mr P too.

The CRM Code

HSBC has signed up to, and agreed to adhere to, the provisions 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 (APP) scams like this, in all but a limited number of circumstances.

It is for HSBC to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code. Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM Code, but they do not apply in this case.

Did Mr P ignore an effective warning in relation to the payment being made?

HSBC, in their final response letter to Mr P and in their submissions to this service, referred to a warning that Mr P would've seen at the point he was making the payments. And under the CRM Code, HSBC can be required to present an effective warning where they identify a scam risk. But I don't consider that the payments made by Mr P were so out of the ordinary that the bank ought to have believed there was a scam risk. The amounts sent weren't sufficiently unusual in size nor do I consider there to have been any concerning features of the payments to put HSBC on notice that Mr P was at risk of financial harm. And so, I don't believe HSBC needed to do more than it did in terms of providing warnings about making the payment.

But, as they referred to this warning, for completeness I have considered whether it amounted to an effective warning that was ignored by Mr P. Under the provisions of the CRM Code, as a minimum any '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. In short – the warning needs to be capable of countering the typical features of the generic scam type identified during the payment journey.

I appreciate that Mr P clicked that he was sending the payment to 'friends and family' rather than 'unexpected request from Bank / Police / Organisation'. He's not been able to explain what made him pick this one. This meant that the payment journey he took, and the warning given, was not linked to unexpected requests from organisations. Mr P did see that HSBC were unable to confirm the payee for either of the payments, and was therefore given a warning that told him *'before proceeding with the payment you should contact the beneficiary and confirm their account details via a phone number or email from a trusted source'*. Mr P would have had to click continue in order to confirm the payment.

I don't consider this to constitute an effective warning because:

- There does not appear to have been any mention in the warning of the consequences of proceeding such as saying that the funds might not be recoverable.
- The warning is not specific to the type of scam Mr P fell victim to – it does not mention HMRC scams, or any of the hallmarks of this type of scam including number spoofing.
- The warning does not mention the prevalence of the type of scam Mr P fell victim to. For example, it does not stress how the fraudsters will apply pressure and often given threats of arrest or prosecution.
- The warning does not mention that checks the consumer may consider or have been coached to do would not uncover the scam – such as checking the number they are speaking to online as Mr P did in this case.

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 the warnings given by HSBC were sufficient or contained enough clarity to meet the minimum requirements in the CRM code. Overall, I am not satisfied that the warnings met the requisite criteria here. I don't consider the warnings given were effective warnings as defined within 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 warning to check the payment details independently was relevant to the scam Mr P fell victim to. So, I will consider whether Mr P's decision to move past this warning and continue with the payment, in the circumstances of the scam as it was unfolding, was reasonable.

Did Mr P have a reasonable basis for belief?

I have carefully considered HSBC's representations about whether Mr P had a reasonable basis for believing the transactions to be genuine. But it does not persuade me to reach this conclusion. In particular I am not persuaded that Mr P 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 Mr P lacked a reasonable basis of belief. I say this because:

- Mr P took steps to verify the caller's identity. He had checked the number he was being called from online and it appeared to be genuine. This is a scam technique which is likely to be unknown to a lot of people – and Mr P was clearly unaware of it according to his testimony. Without knowledge that numbers can be manipulated in this way, Mr P would have taken this as a reason to believe the call was genuine.
- Mr P's circumstances meant that he was more vulnerable to this type of scam – he was reasonably new to the UK having moved here only around 18 months before the scam. This meant he had limited experience when it came to taxation matters here, given the amount of time he had worked in the country. So, whilst I understand that some people who pay tax through the PAYE system would be confused as to why they were being asked to pay tax directly – I don't think it is unreasonable that Mr P thought he had to pay tax. This was further added to by the spoofed call from the fraudsters pretending to be from his employers – he believed that his employers had called him to let him know that they had made a mistake and would reimburse him money paid out. As Mr P recognised his employer's number (not knowing it to be spoofed), this call acted as verification from a known and trusted organisation who employ him.
- Mr P explained that he was under pressure and panicked. The fraudsters convinced him that if he did not pay the sums due within a short space of time, he would be arrested and could face court and prison. He also thought his employer could get in trouble if he did not pay it – which may have led him to believe that his employment would be jeopardised too. I think the fraudsters deliberately tried to create anxiety and fear in the hope it would disrupt Mr P's thought processes and make him more compliant. It is important to consider the actions he took against this backdrop.
- I've thought carefully about what HSBC said about the fact that searching for the phone number online would have also brought up numerous warnings from other users about the number being used to perpetuate scams – and that he didn't call back the institutions himself to verify that he owed taxes. I do appreciate that when one searches for the number online, it currently shows that it appears to be the correct number for the Royal Courts of Justice on one side of the webpage, but shows some user warnings on the other side of the page. But Mr P said he did not see these – and I think it is plausible that he saw that it was the verified number and in the pressure of the situation didn't read the other entries that appeared on the webpage. And I can't say that something he did not see or read should have impacted his basis for believing that he was talking to the authorities.
- I've also considered what HSBC said about the fact he didn't ask for any details about the tax liability including what time period it was for, how it had been calculated, or why he had not received any written correspondence before the phone calls. I've thought about this alongside the fact that Mr P paid two individual's accounts and proceeded despite the fact the confirmation of payee process was unable to confirm whether the payee names matched the accounts. Mr P didn't

appear to question the lack of paperwork or details of the tax liability. He said he did ask why they were going to individual payees, and he was told that they were accounts for the relevant government officials. As I explained above, Mr P was not familiar with how taxation works here, and it seems he was of the belief that his employer had confirmed what he was being told by who he thought were the authorities. And whilst he did not call his employer or the authorities back on verified numbers, he thought he had already checked he was speaking to them on verified numbers. So I think it is reasonable that in the circumstances he thought that the need to send the money and payment details were legitimate.

On balance, I am satisfied that when considering all of the circumstances, Mr P's response was not unreasonable. I believe that it was difficult for Mr P to think clearly in the moment. HSBC was aware of this type of scam at the time Mr P fell victim to it and by not providing a relevant warning to him at the time, missed an opportunity to protect him from financial harm. In the absence of any warnings on these types of scams from HSBC, Mr P was not alive to the possibility he was dealing with a fraudster and this is another reason why I don't think he 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 am not satisfied HSBC has been able to establish that when Mr P sent the payments he 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 have explained, I am satisfied was the case here) they should be refunded all of the money that was lost. So I think it is fair that HSBC UK Bank Plc should:

- Refund the £1,800 lost as the result of the scam; and
- Pay 8% simple interest from the date they declined to refund Mr P under the CRM Code until the date of the settlement.

My final decision

For the reasons set out above, my decision is that I uphold Mr P'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 Mr P to accept or reject my decision before 16 September 2022.

Katherine Jones
Ombudsman