

The complaint

Mr C is unhappy that HSBC UK Bank Plc will not refund the money he lost after falling victim to a car purchase scam.

What happened

In June 2021, Mr C found a car listed for sale on an auction website. He has explained that he desperately needed to replace his existing car as it was *“on its last legs.”* Mr C contacted the seller and expressed interest. The seller responded with further photos and details of the car. Mr C asked the seller about some advisories that he’d noted when checking the car’s MOT history online. He also asked if he could arrange to view the car with a mechanic.

The seller responded to say the car was being stored in a warehouse abroad, so the sale was being handled on his behalf by an escrow company. He didn’t directly answer Mr C’s question about the fluid leaks. Mr C was told that the escrow company would handle the whole sale and that it offered a ten-day money back guarantee.

The seller explained that the escrow company did its own mechanical inspection of the car before accepting to sell it on his behalf. He explained the process to take things forward, including registering on the escrow company website and paying an invoice.

Unfortunately, Mr C wasn’t dealing with a genuine seller and was instead interacting with a fraudster. He was tricked into making a transfer of £9,999 to bank account details he’d been given.

Mr C realised he’d been the victim of a scam when the car wasn’t delivered as promised and he was unable to make contact with the escrow company. He contacted HSBC to report what had happened and raised a fraud claim.

HSBC investigated Mr C’s fraud claim and considered its obligations to provide him with a refund. HSBC is a signatory of the Lending Standards Board’s Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams like this one in all but a limited number of circumstances.

HSBC says it can choose not to reimburse Mr C in this case. In its final response, it said the payment had flagged as a higher risk one so the bank gave a warning for Mr C to only make the payment if he was sure the person, business, product or service was genuine. It also said that Mr C could have carried out more checks before sending the money, such as viewing the car in person and meeting the seller to verify they were genuine.

It pointed out that Mr C had gone against the auction website’s advice for buying vehicles. HSBC did contact the beneficiary bank to try and recover the funds Mr C had sent, but sadly none remained.

Mr C thought the bank should have refunded the money he’d lost and referred his complaint to us. Our Investigator looked into it and felt both parties should share responsibility for the

loss. He pointed out the bank should have done more to intervene as Mr C was making a payment that was out of character for him. He didn't think the warning HSBC had given Mr C was sufficient to be considered an "Effective Warning" under the CRM Code. But he was also mindful that Mr C should have done more checks than he did, especially as the sale price for the car was well below its market value. He thought about the impact of Mr C's health but did not conclude that he was less able to protect himself from this type of scam.

Mr C responded to say he was surprised at the outcome. He was anticipating a refund of all the money that he'd lost along with compensation for the difficult situation he'd been left in. He provided an email from the Police to show this was a fraud.

HSBC did not fully agree either. It broadly agreed with what our Investigator had said about Mr C not having a reasonable basis for believing the transaction was legitimate. But it felt it had fully met its obligations under the CRM Code. The bank considered it had provided an "Effective Warning" to Mr C which outlined steps he could have taken to prevent the scam.

As the parties could not reach agreement, the complaint has been referred 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.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the 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've considered whether HSBC should reimburse some or all of the money Mr C lost in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect Mr C from the possibility of financial harm from fraud.

There's no dispute here that Mr C has been the victim of a scam. He was tricked into making the payment and didn't receive anything in return for his money. But this isn't enough, in and of itself, for Mr C to receive a refund of all of the money he's lost from the bank.

Under the provisions of the CRM Code, both the bank and its customer have obligations. If it can be shown that the customer has met their requisite level of care then they will receive full reimbursement. If the customer has not done this, then it is for the firm to show that it has met its obligations under the Code. The most relevant obligation for the firm is to provide an "Effective Warning". If a firm has not met its obligations then it, subject to any liability by the bank which received the money, will be liable for 50% of the customer's loss.

Having carefully considered the circumstances of this case, I don't think Mr C had a reasonable basis for believing the payment was for genuine goods, but neither do I think HSBC provided an 'Effective Warning' to him. So the fair outcome is for HSBC to refund 50% of Mr C's losses. I'll explain how I have reached this conclusion below.

Did Mr C meet his Requisite Level of Care under the CRM Code?

I have first considered whether Mr C failed to take the requisite level of care required for HSBC to choose not to reimburse him under the terms of the CRM Code.

The CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this, in all but limited 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 other exceptions which aren't applicable here. So I need to consider whether any exceptions apply to Mr C's case.

Did Mr C ignore an Effective Warning?

I accept that Mr C was shown a warning before he made the payment and that the warning displayed was generated after Mr C had selected the purpose of payment to be *Making Large Purchase (e.g. house or car)*. But the information presented to Mr C was not strongly relevant to the type of scam that he fell victim to. It suggests that fraudsters can intercept emails or invoices and alter account details so they can appear genuine, then lists a number of factors to check. I accept firms can't provide warnings about every possible scam type, but I don't think this information should have resonated with Mr C to such an extent that it should have had a material effect in preventing the vehicle purchase scam that took place.

HSBC has said that its warning does highlight steps Mr C could have taken to prevent the scam he fell victim to as it does outline the need to check the seller before making a purchase and to be aware of false websites and reviews. It points out that the warning highlighted the importance of physically seeing high value items before sending any money and Mr C did not do this. But the warning did not include any details of specific actions to take in order to try and verify the legitimacy of a seller and it doesn't give any guidance on how to spot fake websites and reviews. The price being too good to be true is a very common feature of a vehicle purchase scam, but the information presented by HSBC did not highlight this. I don't consider the warning really brought to life what a scam of this nature looks and feels like.

I'm also mindful that the information HSBC presented to Mr C applied to more than one type of large purchase. I don't think the warning HSBC gave was impactful or went far enough to be effective, so I don't think Mr C acted unreasonably by going ahead and making the payment. The warning didn't do enough to make him stop and think and it did not affect his decision making so that the prospect of this vehicle purchase scam succeeding was reduced.

Did Mr C have a reasonable basis for believing the payment he made was legitimate?

I've also thought about the steps Mr C took to reassure himself about the legitimacy of the transaction and whether it was reasonable for him to proceed with the payment. Having done so, I am not persuaded Mr C 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 or business he transacted with was legitimate.

This is not a finding I have made lightly. I have considered that Mr C did undertake some checks, including a HPI check and a check into the vehicle's MOT history. Mr C has explained that he saw on forums that other people had successfully bought cars from the same company in the same way, so he thought it was legitimate and safe.

But the car Mr C was trying to purchase was advertised at £9,999 to include the cost of delivery to his address and potentially the cost of return transit if the vehicle was unsuitable. Having reviewed recognised industry trade guides that provide average car sale prices based on make, model, vehicle age and mileage, this price is considerably less than what comparable vehicles were being sold for at the time of the scam. The information I have seen suggests the market value for this car in this condition was over £20,000. On this basis, I think the price the car was advertised for was too good to be true and ought to have raised concerns.

I've listened to recordings of the conversations Mr C had with HSBC when the bank investigated the scam. The bank's advisor asked Mr C about the price and whether he thought it was too good to be true. Mr C responded to say that *"it felt like it, yeah"*. He later explains that he was pushed to make payment in order to secure the car. It's clear that Mr C felt under pressure to make a quick decision which can in and of itself be an indicator that something is not what it seems. So I think Mr C ought to have taken a step back and weighed everything up carefully before deciding to go ahead.

Mr C had asked key questions that the seller had not directly answered, including his request for the car's VIN and details of any repairs following the MOT advisories. From what Mr C has said, he was aware that this price was low for this type of vehicle. I think Mr C should have been much more sceptical about why a seller would be willing to make an arrangement with a company that potentially loses them money compared to selling privately. Whilst I accept that people can and do arrange to sell items at a discount for a quick sale, I think there were things about the situation that in the cold light of day did not add up. I consider that Mr C ought to have had greater concerns about the legitimacy of the seller and car and that, in turn, ought to have led to a greater degree of checking on Mr C's part. He placed a lot of trust in strangers and in the validity of the escrow set up. But buying a car sight unseen at a considerable discount was always a big risk. I think Mr C should have had done more than he did to question the deal and to satisfy himself that it was legitimate before making the payment. By not carrying out sufficient checks, he did not have a reasonable basis for believing this was a legitimate sale and so fell below the level of care expected of him under the CRM Code.

Did HSBC meet its standards as a firm under the CRM Code?

Even though I don't think Mr C had a reasonable basis for belief when making the payment, he may still be entitled to a refund of 50% of the money he lost if HSBC didn't meet its obligations under the CRM Code, one of which is to provide Effective Warnings.

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific. Due to the size of this payment and how unusual it was for Mr C, I think HSBC was required to provide an effective warning.

Earlier in this decision, I concluded Mr C did not ignore an Effective Warning. I was not persuaded HSBC's warning to Mr C was impactful enough in the context of this scam to meet the minimum requirements of an "Effective Warning" under the CRM Code. It follows that I am not persuaded that HSBC has provided an effective warning to Mr C.

Mr C is not an expert in scams and doesn't have the same level of knowledge or experience of this type of scam as the bank does. If HSBC's warning had given advice on how Mr C could have protected himself from this type of scam, and prominently explained the potential consequences of making an irrevocable payment, then I think this would've been important contextual information that would have had a material impact and affected his decision to go ahead and send the money.

Should HSBC have done more to protect Mr C?

In addition, HSBC recognised this payment was unusual and out of character. It describes it as a higher risk payment. Mr C's bank statements show a payment of this size to a new payee wasn't something he typically did. So I think HSBC should have gone further than it did to contact Mr C and question the payment further at the time he was making it. If it had done so, I think it is more likely than not that Mr C would have spoken openly about the purchase he was intending to make and how it had come to be. He would have shared information about the purchase which the bank, with its greater knowledge and experience, would have found concerning, such as the car being abroad and the need to pay an escrow account. I am persuaded that, on balance, the fraud would have then come to light.

The relevance of this finding is that HSBC should pay Mr C interest on the redress that is payable as a result of it falling short in its obligations from the date of loss, rather than the date it decided not to refund him under the CRM Code.

Overall

As I don't think Mr C met his requisite level of care, and also that HSBC could've done more to protect him, I think a 50% split of liability is a fair and reasonable outcome for Mr C's fraud claim under the CRM code and that HSBC shouldn't be held further liable for the remainder of Mr C's losses.

I do sympathise with Mr C as he's clearly been the victim of a cruel scam. It's clear that Mr C didn't know about escrow purchase scams and that he made all of the checks that he thought were relevant. Whilst I appreciate the stress that Mr C has been under, both at the time of the scam and in its aftermath, on balance I am unable to conclude that his health was such that HSBC should have identified him as a vulnerable customer or as someone that was more at risk of falling victim to a scam of this nature.

Putting things right

Mr C did not meet his requisite level of care under the CRM Code. But HSBC did not meet its standards as a firm as it failed to provide Mr C with an Effective Warning and that failure is likely to have had a material effect on preventing the scam. HSBC should now refund 50% of Mr C's loss.

My final decision

For the reasons I've explained, my final decision is that I partially uphold Mr C's complaint against HSBC UK Bank Plc.

I require HSBC UK Bank Plc to:

- Refund Mr C 50% of the £9,999 payment he made to the fraudster
- Pay 8% simple interest, from the date this payment was made until the date of settlement.

Income tax may be payable on any interest paid. If HSBC deducts income tax from the interest, it should tell Mr C how much has been taken off. HSBC should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 August 2022.

Claire Marsh
Ombudsman