

The complaint

Ms L is unhappy because HSBC UK Bank Plc (HSBC) did not reimburse the money she transferred to a fraudster.

What happened

What Ms L says

Ms L says that on 27 March 2021 she received a call from someone who said he was from a court in London but was in fact a fraudster. Ms L has explained that around a week before the call she received a notification to say she owed tax and made a card payment to HMRC of just over £700 using a telephone service. When she received the call from the fraudster, she thought it related to this previous payment and a letter she'd received from HMRC that didn't show her full address.

The fraudster told Ms L that following an audit HMRC had established her tax had been miscalculated. Ms L was advised that recorded delivery letters had been sent to her, but no response had been received. She thought this was because HMRC didn't have her full address. The fraudster told Ms L she was guilty of tax evasion, provided her with a case reference number and a warrant ID as a warrant had been issued for her arrest. Ms L was told her passport would be seized and was very concerned because she has elderly parents abroad who she wanted to visit. The scammer asked Ms L to send a copy of her passport.

Ms L was advised by the fraudster that the matter could be resolved in court and she'd need to get a solicitor who deals in criminal law. The alternative was that Ms L could settle the outstanding amount and afterwards the government would send a solicitor to her home to examine her pay slips and P60. Funds would then be reimbursed if she was found not to owe tax. Ms L says she has always been a law-abiding citizen and panicked. She asked the fraudster how she could be satisfied they were genuine, and he told her to check the number she had been called from was that of the court. Ms L did so and was satisfied the number matched. Given the pressure she was under Ms L made a payment of £1,997.

After this Ms L received a letter through an online messaging app purportedly from HMRC setting out certain allegations and saying further payments were due. Ms L attempted to make further payments to the fraudster, but HSBC prevented these payments from leaving her account. She also set up an account with another firm and transferred £2,497 from her HSBC account to this new account and then on to the scammer. Once the pressure of the call was removed, Ms L realised she was the victim of a scam and called HSBC to report it.

What HSBC say

HSBC hasn't provided a refund under the CRM Code. It says Ms L ignored an effective warning. HSBC also say Ms L didn't have a reasonable basis for believing she was paying the genuine HMRC because:

- The call was about unpaid tax, but Ms L was told to check she'd been called from a London court number. There were also online fraud alerts in respect of this number.

- Ms L received the call on a Saturday – a day HMRC and courts don't work.
- The fraudster didn't ask Ms L any security questions or know any information about her.
- Ms L didn't think to check the caller really was from HMRC or to check their identity.
- Ms L checked her Gateway ID for HMRC shortly before the scam and there were no issues with her tax. She was also employed so her employer would pay tax.
- Ms L says she received a letter from HMRC a few days before and made a debit card payment. The fraudster didn't mention this letter to Ms L, but she raised it. And Ms L didn't ask if she could pay by card even though she'd recently done so.
- The fraudster sent Ms L a letter that was from HMRC, but it didn't include personal information or her National Insurance number. It was also sent via WhatsApp and wasn't well written. HMRC wouldn't communicate in this way.

Our investigation so far

Our investigator wasn't satisfied that the warning HSBC gave Ms L during the payment journey was impactful enough to be considered an effective warning under the CRM Code, so he didn't think Ms L ignored an effective warning. He also thought that Ms L had a reasonable basis for believing she was making a legitimate payment. Our investigator concluded that HSBC should reimburse Ms L under the CRM Code.

Ms L accepted the investigator's findings, but HSBC didn't. It raised the points I have listed above again and said that HSBC also provided Ms L with a link to a fraud hub page that Ms L ignored.

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.

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. It says that Ms L ignored an effective warning it gave during the payment journey and she made the payment without a reasonable basis for belief that the payee was the person she was expecting to pay, the payment was for genuine goods or services and/or the person or business she was transacting with was legitimate.

Having considered the evidence, I am satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded the money Ms L lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- The money was taken from Ms L's current account. It is not clear how Ms L would have used the money if HSBC had refunded it when it should have done, so HSBC should also pay interest on the money it should have refunded at 8% simple per year from the date it decided not to refund Ms L under the CRM Code to the date of payment.

I have carefully considered HSBC's representations about the warning it gave and whether Ms L 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 Ms L failed to

take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code.

Effective warning

In this case I'm satisfied that the requirements of the effective warning exception were not met.

The CRM Code says:

- SF1(2)(e) *As a minimum, Effective Warnings should meet the following criteria*
- (i) *Understandable – in plain language, intelligible and meaningful to the Customer*
 - (ii) *Clear – in line with fair, clear and not misleading standard as set out in Principle 7 of the FCA's Principles for Businesses*
 - (iii) *Impactful – to positively affect Customer decision-making in a manner whereby the likelihood of an APP scam succeeding is reduced. This should include steps to ensure that the Customer can reasonably understand the consequences of continuing with an irrevocable payment;*
 - (iv) *Timely – given at points in the Payment Journey most likely to have impact on the Customer's decision-making;*
 - (v) *Specific – tailored to the customer type and the APP scam risk identified by analytics during the Payment Journey, and/or during contact with the Customer.*

HSBC say Ms L would have seen the following "Scam Warning" page:

"To protect you and other customers we are carefully monitoring transactions for fraud.

This payment has been flagged as higher risk.

Please can you confirm the purpose of this payment?"

HSBC say Ms L chose the payment reason "other" and was presented with the following warning,

"Take Care When Sending Money

Are you sure you want to make this payment?

Stop, think and talk to someone you trust. Fraudsters can contact you unexpectedly and pressurise you into making a payment quickly. We may not be able to recover payments that turn out to be fraudulent.

Is there a more secure way to make the payment, such as debit or credit card?

Visit our Fraud Centre to read more.

By clicking continue, you agree you have read our advice and are happy to proceed with the payment."

HSBC say Ms L would then have been asked to review the payment details before confirming the payment. This screen said,

“Be careful, if you fall victim to a scam you may not get your money back”.

Ms L has explained that she read what she saw on the screen aloud to the scammer and followed his instructions when she set the payment up and chose the payment reason. At the time, she thought she was being provided with a generic warning to ensure she was satisfied the payment details were correct.

I don't think the warning provided to Ms L was impactful. The warning refers to being contacted unexpectedly and pressurised into making a payment, but it doesn't warn against HMRC scams. The warning also doesn't bring to life what this type of scam looks like or mention common features of this type of scam, such as number spoofing. And the warning doesn't enable Ms L to understand the actions she needs to take to avoid falling victim to this type of scam, such as ending the call and contacting the genuine HMRC on a recognised number. So, I'm not persuaded the warning is impactful or specific enough to resonate with Ms L.

Reasonable basis for belief

In reaching this decision, I've had regard to the scene that was set by the fraudster for Ms L and the impact I believe this reasonably had, in all the circumstances, on her thoughts and actions. I'm also persuaded by what Miss L has told this service about how this scam happened. Her recollections are consistent with what she told HSBC when she reported the scam and with what other victims of scams of this nature have described.

I'm satisfied that HSBC has not shown that Ms L lacked a reasonable basis of belief because:

- Shortly before the scam call Ms L received correspondence from HMRC in respect of unpaid tax and she then called HMRC and made a card payment. She has provided a copy of the address details on the letter she received, which are incomplete and show an incorrect postcode. In the circumstances, I can see why Ms L thought she may not have received other letters from HMRC about further unpaid tax. It's also important to note that it seems Ms L was previously asked to pay tax to HMRC directly rather than through her employer – so the scammer's request to pay tax directly did not seem unusual to Ms L.
- HSBC considers that Ms L didn't make sufficient checks before making the payment. The Code requires HSBC to think about all the circumstances at the time of the payment, including the characteristics of the customer along with the sophistication and complexity of the scam. In doing so, I consider HSBC should bear in mind the nature and scale of the scam, as well as its customer's capability to weigh up the situation they are in at that time and make an informed decision about whether to proceed with making a payment. Ms L is not a British citizen and has explained that in the country she comes from employers pay tax, but individuals are required to complete an assessment. She has also explained that she received the scam call at a difficult time for her. Given the situation with the Covid pandemic and travel restrictions to her home country, Ms L says she hadn't seen any family or friends since December 2020, and she lived alone. She had also suffered the loss of close family members, including an aunt in January 2021, and the upset of being unable to travel to the funeral because of travel restrictions. Whilst Ms L continued to work in a stressful job, she had online consultations to help her to manage her mental health. These are all relevant factors in understanding the overall circumstances at the time

of the payment.

- Ms L recalls that she was provided with details like an arrest warrant number. Details like this added to the plausibility of the scam and increased the pressure on Ms L to act. I can see why, in the moment, she believed she was following the instructions of an organisation of authority.
- Ms L asked the fraudster how she would know he was who he said he was. She was advised to look at the website of the court the fraudster said he was calling from. Ms L has explained she didn't open the court web page but searched the name and the correct number came up. This means that she didn't see the scam warnings on the court site or generally. I think the spoofed number would be powerful in persuading Ms L she was speaking to a genuine organisation.
- I'm satisfied Ms L was placed under a considerable amount of pressure by the fraudster to make a quick payment. Ms L was convinced that if she didn't make the payment there would be serious consequences including arrest and the loss of her passport. Her parents were both in their eighties and lived abroad so this caused Ms L to be very worried. This was of course a deliberate tactic by the fraudster to create fear – in the hope it would disrupt Ms L's thinking and make her more compliant. On balance, I'm satisfied this happened here to Ms L and that in all the circumstances her response was not unreasonable. In a call to HSBC's fraud department, Ms L said, *"I heard arrest warrant, tax evasion, passport seized, criminal lawyer and my brain turned into mush."*
- HSBC has referred to the fact that Ms L received the scam call on a Saturday – which is a day HMRC and the court doesn't open. She's explained though that she thought she was being called by an agency with authority to collect unpaid taxes and so wasn't concerned about the timing of the call. And with the benefit of hindsight and the removal of the pressured environment, it's easier to identify elements of the scam that could be considered less believable.
- HSBC was aware of this type of scam at the time Ms L fell victim to it and by not providing an effective warning to her at the time, missed an opportunity to protect her from financial harm. Ms L 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 payment.

Overall, I'm not persuaded HSBC has demonstrated any of the exceptions to reimbursement set out in the CRM Code apply in this case.

I turn now to the payment of £2,497 to a new account the scammer asked Ms L to open with a different firm. This payment isn't covered by the CRM Code as it went to an account in Ms L's own name. I also don't think it was so unusual and out of character that HSBC ought reasonably to have had concerns and asked questions about it. Customers often move funds to an account in their own name and the amount wasn't so significant that HSBC should have intervened. So I'm not asking HSBC to refund this payment.

My final decision

I uphold the complaint and award £1,997 plus simple interest at 8% per annum (less any tax properly deductible) from the date HSBC decided not to reimburse Ms L under the CRM Code to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 9 May 2022.

Jay Hadfield
Ombudsman