DRN-3365408

The complaint

Mrs C complains on behalf of B, a limited company, that HSBC UK Bank Plc won't reimburse payments made as a result of a scam.

What happened

In December 2020 Mrs A received a voice message on her telephone purporting to be from HMRC. Mrs C called back and was informed that she'd filled in her tax return incorrectly, and this resulted in an outstanding amount being owed. Mrs C was threatened with arrest and prosecution if she didn't comply with the 'Tax Inspector's' instruction to make payment.

Mrs C checked the number she was speaking with the person on and this matched the department they claimed they were from.

Mrs C says she was in distress and terrified by the prospect of being arrested, so she complied and made the payments requested. Mrs C made the initial payment of £4,800 to the account details provided.

Meanwhile, the 'Tax Inspector' claimed that they'd spoken to the judge panel and a further £12,000 would need to be paid for administration costs. Mrs C asked for some time to consider the issue but was informed that the offer was a one off and if it wasn't paid, the arrest and prosecution would go ahead. Mrs C says that she felt she had no choice and proceeded with the payment.

Mrs C was then informed that due to her being a risky taxpayer, she'd need to pay three years in taxes amounting to £25,000. Mrs C paid this in two transfers of £12,500 as she was informed that the beneficiary solicitors could only accept a limited amount in each transaction.

Unfortunately, it later transpired that Mrs C had fallen victim to a fraud and had sent the fraudsters a total of £41,800 from the business account in B's name.

Mrs C complained to HBSC and it was considered under the Contingent Reimbursement Model (CRM Code); a voluntary code HSBC has signed up to and agreed to adhere to the terms of. The CRM Code is designed to reimburse customers that have fallen victim to a scam. The starting position under the CRM Code requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

The circumstances where a firm may choose not to reimburse include (so far as they might be relevant to this complaint) where the firm can establish that:

- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning; or
- Where in all the circumstances, 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 that the person or business with whom they transacted with was legitimate.

After looking into Mrs C's claim, it thought it could have done more to protect the account prior to the £4,800 and subsequent £12,000 payment. But it also felt Mrs C could have done more to carry out checks prior to making the payments. As such, it agreed to reimburse half of the first two payments, amounting to £8,400. It added that sufficient prevention measures were in place when making the last two payments of £12,500 each and again said that Mrs C could have done more checks prior to making the payment. It therefore decided not to reimburse either of these final two payments.

Mrs C was unhappy with HSBC's decision, so she came to our service for an independent assessment. An Investigator looked at the evidence provided by both parties but decided HSBC should have refunded more. The Investigator considered the complaint against the CRM Code, but found that HSBC couldn't demonstrate that Mrs C had ignored an effective warning regarding the payments made. Nor did she feel it could demonstrate that Mrs C didn't have a reasonable basis for belief in relation to the first two payments. She did however feel that this could be demonstrated on the final two payments.

As such, the Investigator recommended that HSBC refund B the remaining 50% of the first two payments, and 50% of the final two payments, including interest.

HSBC disagreed with the Investigator's assessment. It continued to defend its position that it provided an effective warning and that Mrs C didn't have a reasonable basis for believing she was legitimately corresponding with, and making payments to, HMRC throughout.

As HSBC has disagreed with the Investigator's assessment, the matter has now been passed to me to make a final decision on the matter.

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'm satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded B the full amount of the first two payments, and 50% of the final two payments made. I'm not persuaded that HSBC has been able to demonstrate the permitted exceptions to reimbursement apply in some of the payments where it has not refunded.
- I understand HSBC has already refunded B 50% of the loss for the first two transactions made (£8,400). HSBC should therefore reimburse the remaining 50% from the first two payments (£8,400) and 50% of the final two payments (£12,500).
- The money was taken from B's business account. It's not clear how this would have been used if HSBC had refunded it when it ought reasonable to have done. So it should pay interest on the money it should have refunded at 8% simple annum from the date it should have refunded this under the CRM Code to the date of payment.

I've carefully considered HSBC's representations about whether Mrs C has a reasonable basis for believing the transactions to be genuine. And I've taken into consideration the conversations and warnings HSBC had with Mrs C prior to the final two payments being made. Having done so, they do not persuade me to reach a different outcome fundamentally set out in the Investigator's view.

Did Mrs C ignore an effective warning?

The CRM Code says that where firms identify an APP scam risk, they should provide an effective warning to their customers. It also says that the assessment of whether a firm has met the standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the fraud.

I'm also mindful that HSBC should fairly and reasonable have had systems in place to look out for unusual transactions or other signs that might indicate its customer was at risk: among other things.

HSBC has already reimbursed B half of the first two transactions as its admitted that it could have done more to prevent them. But it did intervene in the last two payments made to the fraudster as it identified the payments as a scam risk. It says it contacted Mrs C and asked her a series of questions and provided warnings. Broadly, the code says that in order for a warning to be effective it must be impactful, timely and specific.

Having listened to the two calls between Mrs C and HSBC prior to releasing the two final payments, I'm not persuaded that HSBC has been able to demonstrate it provided an effective warning as defined in the CRM Code.

Mrs C had fallen victim to a common scam whereby she was pressured into paying who she thought was HMRC for unpaid tax or face distressing consequences. During both calls, the operator did touch upon this type of scam briefly.

In the first call, the representative of HSBC did ask if Mrs C was asked by the bank, or a third-party such as HMRC, to transfer the funds. And Mrs C did respond untruthfully and said that she hadn't. Instead, it asked questions about the reasons she did give for making the payment – which was that the payments were for a supplier to her business. The representative didn't go into any detail or warn about the common features of impersonation scams or how they are perpetrated despite this clearly being identified as a potential risk. They merely asked if Mrs C was making payment to these organisations. Likewise, in the second call made regarding the fourth payment, the representative merely asked if Mrs C had been instructed by her bank or a third-party to transfer the funds. Again, Mrs C said she had not. She provided the same reasons she'd given for the third payment and no further warnings regarding these types of scams was given.

I think HSBC should have taken the opportunity to look at the bigger picture in these calls. Mrs C had transferred a substantial amount of money from her account on the same day via four relatively high value payments to two new payees. And at the fourth payment, she'd provided the same reasons she'd given for making the third payment of £12,500 from her account. I think these combined factors should have caused HSBC some concern and it should have tailored its questions and warnings taking this into consideration; especially as it had identified a scam risk and asked questions specifically relating to the scam Mrs C had fallen victim to, but didn't go further.

While Mrs C was untruthful about the reasons for her payments, this is typical of victims of fraud. Mrs C—as is common—was coerced by the fraudsters to not disclose the purpose of the payment otherwise they'd be consequences. And she was given a cover story to give in its place to ensure the success of the payment. I do acknowledge that this represents difficulties for the bank, but had it gone further in warning Mrs C about the common features of impersonation scams, which it did ask brief questions about, it likely would have broken the spell as it would have matched the specific circumstances Mrs C had experienced. As such, I don't find that the warnings were impactful for Mrs C or specific to the type of scam she'd fallen victim to.

Did Mrs C make the payment without a 'reasonable basis for belief'?

I'm satisfied that HSBC hasn't shown that Mrs C lacked a reasonable basis of belief for the first two payments because:

- Mrs C does have a business and therefore, it's not unreasonable that she'd be contacted by HMRC regarding her business' tax affairs.
- Mrs C checked the telephone number she was speaking with the caller on. This matched the legitimate telephone number of a division of HMRC found on an official government website.
- There is no evidence to suggest Mrs C was aware of the ability to spoof official government body telephone numbers, so I find this would have been a persuasive tactic.
- The fraudster added another element of legitimacy, along with the official telephone number, by quoting specific details regarding her business.
- The fraudsters—as is common with these types of fraud—placed a significant amount of pressure on Mrs C when contacting her and coerced her into making the payments. They didn't allow her to hang up the telephone, preventing her from taking a step back and evaluating the situation from a more objective position.
- Mrs C was threatened with the issuance of a warrant of arrest and prosecution if she failed to follow instructions immediately, adding an element of fear which no doubt skewed Mrs C's ability to use her better judgement.
- While Mrs C did later acknowledge that she was aware HMRC only communicate via post, this was after the call had terminated and she had time to reflect. Nevertheless, the caller did point out that she'd been sent letters that had been ignored. It's therefore reasonable to assume other forms of communication would be attempted in such circumstances.

Having said this, I do agree that the fraud became less believable at the point the third and fourth payment were made. I say this because:

- It's less plausible that a court would order a three-year advance on taxes considering that these would be impossible to calculate.
- There is a legitimate question as to why this wasn't previously discussed when being instructed to make the first two payments as part of the 'settlement'.
- She was being instructed to make payment to a new payee that she hadn't made the previous two payments to.
- Mrs C was instructed at this point by the caller to be dishonest to the bank, should they call, and was given a cover story; as they claimed if HMRC was mentioned they'd freeze the account which would result in arrest proceedings being implemented.
- At this point Mrs C had been on the telephone for a considerable period of time and had been placed on hold during this call. I think this should have given Mrs C time to reflect on the requests being made.

For the above reasons, I'm not persuaded that Mrs C had a reasonable basis for believing she was legitimately dealing with HMRC when she made the third and fourth payment.

Putting things right

HSBC should now go ahead and reimburse B the remaining 50% of the first two payments, and reimburse 50% of the final two payments.

As I've already highlighted above, this should include 8% simple interest from the date HSBC declined the claim, to the date of repayment.

My final decision

For the reasons I've given above, I uphold this complaint and direct HSBC UK Bank Plc to:

1. Reimburse B the remaining 50% of the first two transactions (£8,400).
2. Reimburse B 50% of the last two payments (£12,500).
3. Pay 8% simple annual interest on these payments from the date HSBC declined the claim to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 8 September 2022.

Stephen Westlake
Ombudsman