

## The complaint

N, a limited company, complains that HSBC UK Bank Plc won't refund the money it lost when it was the victim of a scam.

## What happened

N is a limited company which deals in the buying and selling of used cars. It received an email from another company, offering a car for sale. And, following a number of emails and phone calls with the seller, N agreed to buy the car. The seller then gave N the contact details of the dealer who would deliver the car and, after speaking with the dealer, N arranged to send a payment of £40,060 to the dealer. Unfortunately it now appears both the seller and the dealer were scammers.

After the payment was made, the dealer told N the money hadn't been received into its account. N then spoke with HSBC several times to chase the payment and was ultimately given a print-out showing the account details the payment had been sent to. When these matched the account details it had been given by the dealer, N realised it had been the victim of a scam and asked HSBC to refund the payment.

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 the case and said it felt N had made the payment without a reasonable basis for believing it was legitimate, so it didn't think N was entitled to a full refund under the CRM code. N wasn't satisfied with HSBC's response, so brought a complaint to our service.

I sent N and HSBC a provisional decision on 16 February 2022 setting out why I felt HSBC should refund some of the money N had lost. An extract from my provisional decision is set out below:

*"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 consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.*

*When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have reimbursed N under the provisions of the CRM code and whether it ought to have done more to protect it from the possibility of financial harm from fraud. The CRM code places a level of care on N too, so I've considered whether it met this.*

### *The CRM code*

*As I mentioned above, HSBC is a signatory to the CRM code. The CRM code 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. And it is for the firm to establish*

*that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM code.*

*Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:*

- 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 these don't apply here.*

*Did N have a reasonable basis for belief?*

*This was clearly a cruel scam and I'm sympathetic towards the position N has found itself in. But I need to consider not just whether N believed the payment was for genuine goods or the business it was paying was legitimate, but whether it was reasonable for it to do so.*

*N received an email from a company offering a car for sale. It's said it's not unusual to receive unsolicited offers like this in the motor trade and that it had received other offers from other companies in this way. N also received photos of the car, an invoice and spoke to both the seller and the dealer over the phone.*

*But N also says it searched for the details of the selling company on Companies House. And the Companies House register clearly shows that the company N was told was selling the car was dissolved in 2013. N says it didn't see this, and just saw that the name came up and so assumed the company was legitimate. But the information that the company was dissolved, and when, is on the next line down and directly below the company name on the search results page. So I think N either didn't check the Companies House register, or checked it so quickly that it didn't gain any valuable information.*

*N also said it spoke to a friend who sent it a photo of the seller's premises from an online map application. But N doesn't appear to have checked when this photo was taken or whether it relates to either the seller's registered address or the address N was given on the initial email from the seller.*

*N was clearly concerned enough about the legitimacy of the seller to check Companies House and ask its friend about them. But I don't think these checks went far enough to actually check whether the seller was a legitimate company. And N doesn't appear to have done any checks into whether the people he was speaking to were actually connected to either the seller or the dealer – even if those were legitimate companies. So I don't think N carried out reasonable checks into whether the seller was legitimate and I think the checks it did do should have raised significant concerns.*

*I also think N could have done more checks into whether the car was genuine. N says it checked the value of the car and that the registration number matched the make and model it was given. But it didn't do any checks into, or ask for any evidence of, the ownership of the car – such as asking to see the V5 document. And N was only sent three photos of the car and was told that the seller couldn't get any more photos, which I think should have caused it some concern.*

*N has said it didn't do further checks into the car as there is a custom in the motor trade that sales are done on trust and any misrepresentation will result in compensation being paid by the seller to the buyer. But even if this is a custom in the motor trade, I don't think it was*

*reasonable for N to not carry out further checks into whether either the seller was legitimate or the car was genuine on this basis.*

*So I don't think N had a reasonable basis for belief that the payment was for genuine goods and the business it was transacting with was legitimate.*

*Did N ignore an effective warning?*

*Even though I don't think N had a reasonable basis for belief when making the payment, it may still be entitled to a refund of 50% of the money it 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. The code also says that the assessment of whether a firm has met this standard or not should include consideration of whether compliance with that standard would have had a material effect on preventing the scam.*

*The CRM code 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. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.*

*Due to the size of the payment here, I think HSBC should have identified the risk of a scam and so should have provided an effective warning to N. And HSBC clearly did recognise there was some risk here, as it held the payment and called N to ask about it before allowing it to go through.*

*But I've listened to a recording of this call and I don't think the conversation HSBC had with N was clear or impactful enough to be an effective warning in these circumstances. HSBC asked if N had made the payment itself, how it got the bank details for the payment and whether N had been contacted by someone asking it to make the payment. But it didn't explain that scammers can list fake adverts for cars they don't actually own or can impersonate legitimate companies. It also didn't explain any steps N could take to avoid falling victim to this kind of scam, such as asking for evidence of ownership of the car or calling the company using contact details from its website. And I've not seen anything to suggest an effective warning was provided to N at any other part of the payment process either.*

*N had already done some checks into the seller, and the extra steps HSBC could have suggested would have been relatively quick to follow. So if HSBC had given a clearer warning on what this kind of scam could look like and how N could avoid falling victim to it, I think N would have taken further steps and the scam would have been prevented.*

*So I don't think HSBC provided an effective warning to N, or that N ignored an effective warning in relation to this payment, and I think an effective warning would have had a material effect on preventing this scam.*

*Overall then, I think HSBC failed to provide an effective warning and that N made the payment without a reasonable basis for belief. So I think HSBC should have refunded 50% of N's loss under the CRM code.*

*Recovery of funds*

*I've also looked into whether HSBC could have done more to recover N's funds. But HSBC has shown that it contacted the bank the payment was sent to and was able to recover*

*£27.71. And the bank the payment was sent to has shown us that the rest of the funds were removed from the receiving account before N asked HSBC to refund the payment. So I don't think HSBC could have done more.*

### *Compensation*

*HSBC has paid N £50 as compensation for the delays and poor customer service it provided when N raised its complaint. And I think this offer is fair and reasonable in all the circumstances and so I don't think it would be fair to require HSBC to pay N any further compensation in relation to this."*

I said I'd consider anything further N and HSBC sent in following the provisional 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.

HSBC said it agreed to what was said in the provisional decision. N made a number of further arguments, which I'll address below.

N said that the CRM code says that, where a firm is concerned that a payment may be part of a scam, it should delay the payment while it investigates. And that, as it was telling HSBC that the dealer said it hadn't received the money, this should have given it concern and caused it to delay the payment. But firstly, the payment had already been processed at this point so HSBC couldn't have delayed it. And secondly, I don't agree that the dealer saying it hadn't received the money at this point would have raised significant concern as there were a number of other possible explanations for this, such as incorrect account details being given or entered, the dealer checking the wrong account or the receiving account not correctly updating yet. So I don't agree HSBC should have done more at this stage.

N also said that HSBC's actions impeded its ability to avoid falling victim to the scam, as it didn't allow the chance to recall the payment and suggested the money would be found in the right account. But, as I explained above, I don't think it was unreasonable that HSBC felt this was still likely at that stage, so I don't agree HSBC impeded N's ability to avoid falling victim to the scam.

I also don't agree that N was vulnerable, under the CRM code, as it has suggested. The CRM code says that a customer is vulnerable to scams if it would not be reasonable to expect them to have protected themselves. But, while I accept HSBC didn't provide an effective warning to N when making the payment, I don't think this lack of warning meant that N couldn't be expected to protect itself. And I haven't seen anything else about N's circumstances at the time or the timing or nature of the scam that meant N couldn't be expected to protect itself either.

N has also argued that the dealer it thought it was dealing with is a legitimate company, and so the fact that the seller it thought it was dealing with was not legitimate is irrelevant. But I disagree. As I explained in my provisional decision, I must look at whether it was reasonable for N to believe the payment was for genuine goods. And I think consideration of this should include the full circumstances of the situation, not just one aspect of it. As I explained in my provisional decision, N was clearly concerned enough about the legitimacy of the seller to do some checks. But I don't think these checks went far enough, I think the checks N did do should have raised concerns and I think there were further checks N should have reasonably done into the seller, the person it was dealing with at the dealer and the car itself. So I still don't think N had a reasonable basis for belief when making the payment.

Finally, N said HSBC should have acted sooner to recover the money, as it should have been aware from it saying the dealer said it hadn't received the money that this was a scam. But as I explained above, I don't think it was necessarily clear at that stage that this was a scam. And so I don't think it would be fair to hold HSBC fully responsible for the loss for not intervening further at that stage.

So, for the reasons I've explained above, I still think the conclusions I set out in my provisional decision are correct.

### **My final decision**

I uphold this complaint in part and require HSBC UK Bank Plc to:

- Refund N 50% of the money it lost as a result of this scam, less the £27.71 already recovered – for a total of £20,002.29
- Pay N 8% simple interest on that refund from the date it initially rejected its claim until the date of settlement
- Pay N £50 compensation, if it has not already done so

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 14 April 2022.

Alan Millward

**Ombudsman**