

The complaint

Mr C complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

Mr C lives abroad but was looking to invest some of the savings he held in the UK and so asked an associate of his to look for possible investments for him. His associate got in touch with a bank, who I'll refer to as P, and arranged an appointment to discuss possible investments. But, before the appointment took place, the associate received a phone call from someone claiming to be from P and offering an opportunity to invest in a bond. Unfortunately, we now know the caller was a scammer who had cloned P's details and was only pretending to be working for them.

The associate passed on the information about the investment to Mr C and gave the scammer Mr C's contact details so they could speak to him directly. Mr C had a number of phone calls and email conversations with the scammer, in which he was asked to provide a copy of his passport and driving license and was sent a brochure and a document to sign. And Mr C then made three payments, totalling £50,004.99, to the payment details the scammer gave him.

The scam was uncovered when Mr C's associate decided they wanted to invest themselves as well and called the phone number the scammer had given them. But the number was disconnected and, after investigating further, Mr C and his associate found out the scammer had cloned P's details. Mr C then reported the scam to HSBC and asked it to refund the money he'd lost.

HSBC investigated and said it felt it had provided sufficient warnings to Mr C before he made the first payment, but hadn't provided any further warnings before the second and third payments. It also said it felt Mr C could have done more to make sure he was dealing with a genuine company before making each of the payments. So it offered to refund 50% of the second and third payments, totalling £12,950. Mr C wasn't satisfied with HSBC's response, so referred his complaint to our service.

One of our investigators looked at the case. They didn't think the warning HSBC had shown Mr C before the first payment was effective. And they didn't think HSBC had established that Mr C made the payments without a reasonable basis for believing that they were genuine. So they felt HSBC should refund all the money Mr C had lost as a result of the scam. HSBC disagreed with our investigator, so the complaint has been passed 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.

Having done so, I think HSBC should refund all the money Mr C lost as a result of this scam. I'll explain why below.

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 the customer even though they authorised the payment.

HSBC is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr C fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

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:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o 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 Mr C ignore an effective warning?

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. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

HSBC has sent us a copy of the warning Mr C was shown when making the first payment to the scammers. It says:

"This could be a scam

Using your debit or credit card may offer you more protection against fraud.

Fraudsters can intercept emails or invoices and alter account details so they appear genuine. It's important to check:

- *Where you're sending the money by contacting the person or company directly*
- *The email address to ensure it's from the correct company or person*
- *For irregularities in any email or invoice, such as spelling mistakes or incorrect formatting*
- *The seller before making a purchase. Beware of false websites and reviews*
- *For high value items, for example a car, make sure you physically see it before sending money*

Visit our Fraud Centre to find out more

By choosing to continue, you agree you've read out warning and are happy to proceed. You accept we may not be able to recover your money if it's sent to a fraudster's account."

While this warning does explain the risks and consequences of fraud, and set out actions a customer can take to address those risks, I don't think it's specific enough to Mr C's circumstances to be effective in this case. The warning talks about making a purchase and seeing items before sending money, which aren't relevant to what Mr C was doing. It talks about contacting the company directly, which Mr C thought he was doing when he spoke to them over the phone. And it doesn't explain what an investment scam, like the one Mr C fell victim to, would look or feel like.

So I don't think the warning HSBC showed Mr C before the first payment was effective in his circumstances. And HSBC accepts it didn't show any further warnings before the second and third payments. So I don't think Mr C ignored an effective warning in relation to any of the payments he made.

HSBC has argued that it was prevented from showing Mr C an effective warning, because he selected that the first payment was for "making a large purchase", rather than "making an investment". But, when assessing whether this exclusion to reimbursement under the CRM code applies, I think the relevant test is whether the consumer ignored an effective warning – not whether the bank was prevented from providing a more effective warning. I can then only look at the warning that was actually shown to Mr C. And, regardless of why this warning was shown, I don't think it was effective in Mr C's circumstances. So I don't think he has ignored an effective warning in relation to these payments.

Did Mr C have a reasonable basis for belief when making the payments?

This was a sophisticated scam in which Mr C was contacted by a number of different people through several contact methods and was sent a number of documents.

Mr C says he spoke to two different people claiming to be from P, one who claimed to be an account manager and one who claimed to be an accountant. And he communicated with them through both phone calls and emails. He was also sent a number of documents, including a brochure which I've seen and think looked relatively professional, and a contract to sign. And he was asked to provide his passport and driving license to verify his identity. So I think it's reasonable that these things will have made the investment seem genuine to him.

Mr C was also introduced to the scammers by his associate, which will have given them some credibility in his eyes. And he'd asked his associate to look for investments for him, so the investment opportunity wouldn't have come out of the blue and it wouldn't have seemed suspicious for him to be contacted about it.

HSBC has said Mr C should have done more checks into the company he was investing with and the people he was speaking to. But Mr C says he looked into P and saw that they were well reviewed. And he says he saw other bonds they were offering with similar interest rates to what he was being offered. So he appears to have tried to do some checks into the company he was investing with, but just not uncovered the possibility of the company being cloned. And while Mr C could have done more checks, I don't think it was unreasonable for him not to do more – particularly as the contact he'd had and the documents he'd been sent appeared to be genuine.

HSBC has also raised that Mr C was asked to send money to an account with a different name to that of the company he thought he was investing with and that he misled it about the reason for the payments. But one of the documents Mr C was sent by the scammers explained that the money was to be sent to a segregated account for his protection and, as the document looked relatively professional, I don't think it was unreasonable for Mr C to accept this explanation. And Mr C has explained that he said the payment was for a purchase rather than an investment as he didn't want HSBC to try to sell him one of its own investments instead. And while this wasn't the reason HSBC was asking what his payment was for, I don't think Mr C's explanation for saying the payment was for a purchase suggests he didn't have a reasonable basis for belief that the investment was genuine.

So I think Mr C did have a reasonable basis for belief when making the payments.

Overall then I don't think HSBC has established that any of the exceptions to reimbursement under the CRM code apply here. So I think HSBC should refund Mr C the money he lost in full, under the terms of the CRM code.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund the remaining £37,054.99 Mr C lost as a result of this scam
- Pay 8% simple interest on this refund from the date it initially responded to Mr C's claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 December 2022.

Alan Millward
Ombudsman