

The complaint

Mr T complains that HSBC UK Bank Plc won't refund the money he lost after he fell victim to an 'authorised push payment' ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here, But briefly, and based on the submissions of both parties, I understand it to be as follows.

Mr T saw a van for sale, on a well-known online marketplace, that he was interested in buying. Mr T has said the van was around £1,000 cheaper than others he had seen advertised. He's told us that he contacted the seller, who told him this was because he was looking for a quick and guaranteed sale, and he needed the money to purchase another vehicle he'd seen. Mr T believed this was a plausible explanation.

The seller told Mr T that there were a number of people interested in buying the van. The van was too far away for Mr T to go and look at it. But believing everything to be genuine, and wanting to secure the vehicle, Mr T agreed to buy the van for £4,000 and to send the money straight away. Mr T offered to pay by PayPal, but the seller told Mr T he would have to pay VAT if he paid that way, so he agreed to pay by bank transfer. Mr T has said he'd paid for items in this way in the past, without any issues, so he's said he didn't have any reason to think this was unusual or concerning.

On 8 September 2021, believing everything to be genuine, Mr T went ahead and made a payment for £4,000 through his mobile banking app. But, unknown to him at the time, he had been dealing with a fraudster and had sent his payment to an account controlled by the fraudster. Mr T realised he had been scammed when his son went to collect the van from the address that had been provided, only to find an empty and derelict property. He then found he was unable to make any further contact with the person he had been speaking to.

Mr T raised the matter with HSBC. 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.

HSBC issued its final response to Mr T on 23 December 2021, not upholding his complaint. In summary it said it had provided an effective warning to Mr T at the time the payment was made. It added that Mr T didn't see the vehicle in person, nor seek information about the van or its seller. Overall it didn't consider it was liable for the loss Mr T had suffered. HSBC tried to recover the money lost from the beneficiary bank (the bank to which the money was sent) but was unable to recover any money.

Unhappy with HSBC's response, Mr T, through his representatives, then brought his complaint to this service. One of our investigator's looked into things and thought the complaint should be upheld in part. In summary, this was because he wasn't satisfied HSBC had established that Mr T had ignored an effective warning. But, the investigator felt Mr T should've done more checks to make sure the payment he was making was for a legitimate

van, so he should share the responsibility with HSBC. In view of this, our investigator recommended that HSBC should refund Mr T 50% of the money he lost, along with interest.

Mr T agreed with our investigator's view, but HSBC disagreed. In summary it maintained that it had provided Mr T with an effective warning and that the price of the van was too good to be true.

As agreement couldn't be reached, the complaint has been passed to me for a 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.

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.

As I've mentioned above, the CRM Code provides additional protection for the victims of APP scams. I'm satisfied that the payment Mr T made falls within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully where the firm can establish that the customer failed to take sufficient care when making the payment (often referred to as the exceptions to reimbursement).

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

- The customer made payments without having 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.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

*There are further exceptions outlined in the CRM Code that do not apply to this case.

When assessing whether it can establish these things, a Firm must consider whether they would have had a 'material effect on preventing the APP scam'.

So, in deciding the fair outcome for this complaint, I must first determine whether HSBC has established these exceptions to reimbursement can be fairly applied.

I have carefully considered HSBC's representations about the warning it gave and whether Mr T had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach a different view to our investigator. I'll explain why;

Effective Warnings

I accept that Mr T was shown a warning before he made the payment and that the warning displayed was generated after Mr T had selected the purpose of payment to be 'Buying Goods and Services'.

The CRM Code sets out minimum criteria that a warning must meet to be an 'effective warning'. In very broad terms, it requires that a warning will be capable of countering the typical features of the generic scam type identified during the payment journey. In this case I'm satisfied that the requirements of the effective warning exception were not met. I'll explain why:

- The warning starts off by advising the customer to use a debit or credit card as it may offer more protection. But it isn't uncommon to use bank transfer as a method of payment for larger purchases.
- It then highlights email / invoice intercept scams and to look out for irregularities. But this wasn't relevant to the type of scam Mr T was falling victim to, as he was not communicating with the fraudster by way of email.
- The warning does, at least in part, attempt to highlight some steps Mr T could have taken to prevent the scam he fell victim to. It does say to make sure you physically see an item before purchasing it – but that is not always possible (as was the case here, given the distance Mr T was away from the seller).
- It then goes on to list some things that consumers could do to check matters;
- The first point advises to contact the person or company where the money is being sent. The second point advises to check the email address to ensure it is from the correct person. And the third point advises to check for any irregularities in an email invoice. While these steps are potentially useful to help identify an email / invoice scam, as mentioned above I'm mindful that this wasn't the scam that Mr T was falling victim to. Here, Mr T was satisfied with whom he was dealing with, and given the nature of the scam I don't think any of the step's HSBC recommended would have made a difference here or had a material effect on preventing the scam.
- The fourth and fifth bullet points are more relevant, but I'm not satisfied they would have had a material effect on preventing the scam and overall the warning isn't an effective warning as set out by the CRM Code. With the fourth bullet point, HSBC advises to check the seller being mindful of false websites and reviews. But again, Mr T thought he was dealing with a legitimate seller from an advert from a legitimate online marketplace – so I don't think this would have made Mr T stop and think.
- 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 information presented to Mr T was strongly relevant to the type of scam that he fell victim to. While it does mention car purchases, it also mentions other types of potential fraud. 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 T applied to more than one type of large purchase.

In summary, I don't think the warning HSBC gave was impactful or went far enough to be effective, so I don't think Mr T acted unreasonably by going ahead and making the payment. Overall, I don't consider the warning given was an effective warning as defined by the CRM Code. It follows that HSBC has not established it can fairly apply the exception to reimbursement relating to 'ignoring an effective warning'.

Did Mr T have a reasonable basis for belief when making the payment?

I've also thought about the steps Mr T 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 T 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.

Mr T has explained that he had made purchases from the online marketplace before and paid for goods by way of bank transfer. I can understand how that would have reasonably given him some assurance. But the van Mr T was trying to purchase was advertised at just over £4,000 and having reviewed recognised industry trade guides, that provide average vehicle 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 van in this condition was over £9,000. On this basis, I think the price the van was advertised for was too good to be true and ought to have raised concerns.

Alongside this I don't think the reason the fraudster gave Mr T for not being able to pay PayPal was plausible, in that there wasn't any clear explanation or reason for how paying by PayPal would mean VAT needed to be paid. When considering these together, I think it ought to have led Mr T to question further, why the seller wasn't accepting a method of payment that would have offered Mr T more protection.

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 T ought to have had greater concerns about the legitimacy of the seller and van and that, in turn, ought to have led to a greater degree of checking on Mr T's part.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mr T from proceeding. But when considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mr T ought reasonably to have taken further steps to protect himself. Buying a van, unseen, at a considerable discount was always a risk. I think Mr T should have done more than he did to question the deal and to satisfy himself that it was legitimate before making the payment.

With the above in mind, in the particular circumstances of this case, I consider that Mr T ought to have had concerns about the legitimacy of the goods he'd been offered and that, in turn, ought to have led to a greater degree of checking on Mr T's part. In not carrying out sufficient checks I don't find he had a reasonable basis for believing the goods were genuine. I therefore consider, in line with the provisions of the CRM code, liability should be shared equally between HSBC and Mr T.

Finally, I've considered whether HSBC did all it could to try and recover the money Mr T lost, once he had reported the scam to it. From the evidence I've seen, HSBC did contact the receiving bank when he raised the matter, but unfortunately the receiving bank told it that no funds remained. So I think HSBC has done what could reasonably have been expected of it to try to recover the money

Putting things right

For the reasons explained above, I think it's fair that HSBC UK Bank Plc should now;

- Refund Mr T 50% of the money he lost (being £2,000).
- Pay interest at the simple rate of 8% per year on that amount (less any tax properly

deductible) from the date HSBC declined Mr T's full claim under the CRM to the date of settlement.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 January 2023.

Stephen Wise
Ombudsman