

The complaint

Mrs F and Mr S are unhappy that HSBC UK Bank Plc has not refunded them after Mrs F was the victim of an HMRC impersonation scam. As a result, they lost £4,485 to the scammers with payments that debited their joint account on 7 April 2021.

Whilst this was a joint account, it was Mrs F that fell victim to the scam – so I have only referred to her throughout this decision.

What happened

The details are well known to both parties and were set out in the investigator's view of 21 October 2021 - so I won't repeat them here. The investigator upheld the complaint in part – upholding the first transfer of £1,697 but he did not uphold the other payments Mrs F made as these were carried out by using a debit card and transferred into an account in Mrs F's own name. Mrs F and Mr S accepted the investigator's findings. HSBC did not respond.

Further developments

I wrote to HSBC setting out my initial thoughts about upholding the complaint. In response it said:

- Given the reference in the initial provisional decision to the following article: [HMRC leads number spoofing crackdown to prevent fraud - BBC News](#), it questioned whether number spoofing can have reasonably been applicable here.
- It also noted there were some unusual elements such as documents sent through social media - its position is that the combination of issues was such that Mrs F did not have a reasonable basis for belief.

I ask Mrs F for some further information. She told me:

- She no longer has the number that called her saved on her phone and her mobile phone provider does not keep a record of incoming calls.
- She challenged the scammer on the phone and told them she was suspicious of the number they had called on. The caller then told her that he would call her from the HMRC number, and to search the website for herself. She says she saw the number, hung up the phone and was called back from that exact number. She says she checked the number accurately.
- She has been a taxpayer since the beginning of 2019.
- Her salary had increased in February 2021, so she knew the amount of tax had changed but she wasn't aware of how much tax she paid per year. She has lived in Australia since she was 21 years old, and here every year she was required to submit a tax return even if employed by someone else. She only lived in UK for one year before lockdown.

- She thought she was going to get a fine because she should have lodged a return like in Australia.
- Her work was highly stressful and impacted significantly on her ability to understand the tax system. Her role does not mean regular office hours and she was dealing with incredibly vulnerable children. She was already under a lot of pressure and stress and it impacted her to see all the signs that she was being scammed.

I issued my provisional decision on 24 August 2022. Mrs F accepted my provisional decision and HSBC confirmed it had nothing further to add.

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.

When doing so, 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 have been good industry practice at the time.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

The debit card payments are not in dispute – Mrs F has accepted the investigator's findings on that, so my decision will focus on the first transaction of £1,697.

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 Mrs F in line with the provisions of the of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) it has agreed to adhere to and whether it ought to have done more to protect Mrs F from the possibility of financial harm from fraud.

There's no dispute here that Mrs F was tricked into making the payment. She thought she was speaking to someone from HMRC and that she owed tax. But this isn't enough, in itself, for Mrs F to receive a refund of the money under the CRM Code. The code places a level of care on Mrs F too.

The CRM code

HSBC has signed up to and agreed to adhere to the provisions 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 (APP) scams like this, in all but a limited number of circumstances.

It is for HSBC to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- 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 they do not apply in this case.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am not persuaded the concerns HSBC has raised about the legitimacy of the transaction Mrs F was making are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payment she made. It follows that I do not think HSBC has been able to establish that it may choose not to reimburse Mrs F under the terms of the CRM Code.

Did Mrs F have a reasonable basis of belief?

Having thought about what both sides have said and provided, I consider Mrs F had a reasonable basis for believing the payment she was making was for a genuine tax payment and that the person she was transacting with a genuine representative of HMRC. In reaching that conclusion, I have thought carefully about what it is realistic to have expected Mrs F to do when she was paying the sum of £1,697 bearing in mind the pressure she would have been under in the moment of the call like this.

There were controls in place to prevent spoofing of HMRC's most used inbound helpline numbers, but I don't think Mrs F ever said she was called from the main HMRC number. Indeed this press release from the government <https://www.gov.uk/government/news/scam-hmrc-call-reports-drop-by-97> indicates HMRC spoof calls were being reported at peak records in the month before Mrs F's transaction: "*Reports of scammers impersonating HMRC in phone calls peaked at 79,477 in March 2021 and fell to just 2,491 in December 2021*".

Mrs F says she received an automated call saying someone from HMRC would call her. She says she questioned the caller who guided her to the number on the website - which gave her reassurance. Even if the consumer was directed to a more obscure number on the website – I don't think Mrs F would have necessarily realised this was the case at the time, nor do I think she would have had time to make that kind of evaluation in the pressurised moment of a scam like this. I think in the moment - and under pressure - she reasonably would have been reassured she was speaking to someone genuine. Mrs F says she was unaware numbers could be spoofed, so believed the caller was from HMRC. In the circumstances I don't think this was an unreasonable assumption to make.

I asked Mrs F to provide evidence of this call, but she no longer has the number in her mobile phone history. She has tried to get this information via her mobile phone provider and has supplied evidence confirming they do not keep records of incoming calls. This lack of evidence doesn't mean a spoofed call didn't happen (and nor does the controls put in place to prevent these calls – as shown by the reported figures above). Ultimately, I am persuaded by her testimony that things happened as she has explained.

Mrs F told us she had recently changed job roles and had a pay increase. So, in the moment and pressure of the call – she thought that her employer had perhaps made an error with her tax code. She says she was convinced by the scammer that she was responsible for checking her taxes. She also explained that she is unfamiliar with the UK tax system having

only been a UK taxpayer since the beginning of 2019 and having previously resided in Australia. I can therefore see why Mrs F thought she might therefore be liable for additional tax. In the circumstances, I don't consider this to be an unreasonable conclusion to draw.

I don't disagree there were some unusual elements such as the scammer seemingly knowing little information about Mrs F, the documents sent through social media and the payee not having any reference to HMRC. However - I've considered the scene that was set by the fraudster for Mrs F and the impact I believe this reasonably had on her thoughts and actions. She told us she was overwhelmed and couldn't think straight. This was of course a deliberate tactic by the fraudster - creating fear of arrest – in the hope it would disrupt Mrs F's thinking and make her more compliant. At first glance – I think the letter does look like a genuine HMRC letter and I doubt that Mrs F had time to scrutinise the document for its errors. On balance, I believe that it was difficult for Mrs F to think clearly in the moment and she had little opportunity to make further enquiries and that in all the circumstances, her response was not unreasonable.

I'm also persuaded by what Mrs F 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.

Should HSBC have done more to try and prevent the scam and protect Mrs F?

I've thought about whether HSBC did enough to protect Mrs F from becoming a victim of a scam. The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide effective warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Mrs F made this payment, HSBC should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

In this case, Mrs F was making a relatively modest payment – although I appreciate it was a large amount to her. But I don't think the amount of this payment would have made it stand out enough for HSBC to have been concerned that Mrs F might have been at risk of financial harm from fraud at the time that she made it. The payment was relatively low in value. So, I don't think HSBC should have identified an APP scam risk in the payment journey or that it needed to provide Mrs F with an effective warning.

That said, HSBC has said a warning was shown – although Mrs F says she doesn't recall seeing a fraud alert warning at all at the time. But HSBC's contact history notes indicate a fraud warning was shown. So even though HSBC did not need to provide a warning - I've still considered whether seeing the warning at the time the payment was made should have entered Mrs F's thought processes.

Looking at the warning HSBC says was provided, I can see it attempts to prevent generic scams, but I don't think the warning makes the risk of falling victim to this particular type of scam obvious.

The warning says "*Stop, think and talk to someone you trust. Fraudsters can contact you unexpectedly and pressure you into making a payment quickly*" but, it doesn't cover the common features of HMRC scams or really bring to life what the type of scam Mrs F fell victim to looks like. And it doesn't explain in sufficient detail what Mrs F could have done to protect herself against this type of scam. Overall, I'm not persuaded that a reasonable

person in Mrs F's position would fully understand the scam risk from the warning HSBC gave.

Taking account of all the circumstances here, which includes the warning messages HSBC gave, I don't think Mrs F's actions fell below the level of care expected of her in this situation. I think HSBC ought to have fully refunded Mrs F at the time she reported the loss and so it should fairly and reasonably compensate her by refunding that loss now.

Did HSBC do enough to recover Mrs F's funds?

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But, I've thought about whether HSBC took reasonable steps to recover Mrs F's funds once it was made aware, she was the victim of a scam.

The scam payment was made on 7 April 2021 at 10.59 and – as I understand it - Mrs F reported the scam to HSBC on the same day (although I can't see any reference to a date and time of her reporting on HSBC's file). HSBC contacted the receiving bank on 8 April 2021 at 18.59 – so it seems to me this was quite some time after the scam was reported.

The beneficiary bank confirmed to HSBC on 2 June 2021 (some two months later) that no funds remained – although it didn't indicate when exactly those funds were removed.

Therefore, I can't safely conclude whether HSBC's delay in contacting the beneficiary bank would have made a difference here.

However, as HSBC is no longer contesting the outcome above – any potential errors in recovery do not make a difference to the overall outcome of the case. So, I don't need to consider this point further.

Overall, the CRM Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost. So, I think it's fair that HSBC refunds the money Mrs F lost, along with interest.

Putting things right

In order to put things right for Mrs F I require HSBC UK Bank Plc to:

- refund Mrs F's loss of £1,697
- pay 8% simple interest on the refund from the date her claim was declined to the date of settlement.

My final decision

My final decision is I uphold the complaint and I require HSBC UK Bank Plc to put things right for Mrs F and Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr S to accept or reject my decision before 10 October 2022.

Kathryn Milne
Ombudsman

