

The complaint

M has complained that HSBC UK Bank Plc won't refund it after it fell victim to a scam. Mr R has brought the complaint on behalf of M and personally 'dealt' with the fraudster, so I'll refer to Mr R instead of M where relevant throughout this decision.

What happened

In June 2021 Mr R was expecting to complete on a house purchase. Unfortunately, emails between him and his solicitor had been intercepted and so he unknowingly ended up making his deposit payments to a fraudster rather than to his solicitor.

Mr R made five payments to accounts belonging to fraudsters, totalling £50,000, made up of five payments for £10,000 each. The first four went to one account, with the final payment going to a different account on instruction of the fraudster. Mr R realised he'd fallen victim to a scam following a conversation with his genuine solicitor.

Mr R reported the scam to 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 assessed what had happened against the provisions of the CRM Code. It decided Mr R didn't have a reasonable basis for belief the payments he was making were legitimate and where HSBC provided written or verbal warnings, that Mr R ignored them. HSBC refunded 50% of the third payment Mr R made, this was because it acknowledged it didn't do enough to protect him from falling victim to the scam for this specific payment. But it felt it had done enough to protect Mr R in relation to the other payments. HSBC contacted the beneficiary banks (the banks to which the payments were made) and was able to recover £2,598.90 of the money that was lost, which was refunded to Mr R.

Unhappy with HSBC's response Mr R, on behalf of M, referred the complaint to this service. He felt HSBC hadn't done enough to protect him and should've been clearer and more insistent as to how to protect yourself from an email intercept scam. Mr R accepted he could've done things differently with the benefit of hindsight but felt the loss could've been avoided but for HSBC's actions.

With HSBC's partial reimbursement of the third payment Mr R made, plus sums recovered from the recipient banks M's loss stands at £42,401.10.

An Investigator looked into Mr R's complaint and upheld it. Overall she felt Mr R had fallen victim to a sophisticated scam, hadn't acted without a reasonable basis for belief and hadn't ignored Effective Warnings (as she concluded HSBC hadn't provided any).

HSBC provided a detailed response which I've summarised below:

- Mr R tried to make the first payment, following a confirmation of payee 'no match' warning, several times which suggests he had reservations about it.

- While Mr R says he contacted his solicitor by phone and email to check the account details the time of the email suggests this couldn't have been the case. And in any event, the written response from the fraudster, posing as the solicitor, contained poor grammar and didn't make sense.
- HSBC believes Mr R understood that he should verbally confirm with the solicitor the Confirmation of Payee 'no match' message.
- The reason given for the change of account details prior to the fifth payment was implausible.
- During intervention calls with HSBC, Mr R misled the call handlers into thinking he'd verbally checked the account details with the solicitor.
- M should've known better as a business and HSBC questioned whether M followed its own payment procedures.
- Mr R should've questioned the legitimacy of the correspondence from the fraudsters, as the tone was different and the invoices looked odd and unformatted.
- It also referred to the contents of a call recording to defend its position which hadn't previously been provided.

The investigator explained why she was still of the view the complaint should be upheld.

As agreement hasn't been reached the complaint has been passed to me for a final 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.

Having done so I'm satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded the money M lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- I am also mindful that when Mr R made these payments, HSBC should fairly and reasonably also 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). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud. Here I'm satisfied HSBC should have done more before processing the payments. Had it done so, I am satisfied the fraud would have come to light and the loss prevented.
- I'm also satisfied, for reasons I'll explain later in this decision, HSBC should pay M 8% simple interest from the date of each payment to the date of settlement.

I have carefully considered HSBC's representations about the warnings it gave and whether Mr R had a reasonable basis for believing the transactions to be genuine. But they do not persuade me to reach a different view. In particular I am not persuaded that Mr R failed to

take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code. I'll explain why.

First I've considered whether Mr R ignored Effective Warnings. I've seen a written scam warning that was shown to Mr R and listened to three call recordings that HSBC has provided. All of the payments Mr R made flagged with HSBC as requiring further checks and/or warnings ahead of processing. I'm therefore satisfied HSBC identified APP scam risks on all five payments.

Prior to the processing of the first payment HSBC called Mr R to make enquiries as to the purpose of the payment. The call handler asked Mr R a number of questions which covered a few different types of scam. Relevant to the scam Mr R fell victim to, the call handler asked Mr R how he'd received the account details to which he responded that he'd received them by email. The call handler went on to ask him whether he'd verbally confirmed these details and Mr R said he had. Later on in the conversation Mr R was asked whether he'd confirmed the account details were legitimate and in response he said he'd spoken to his solicitor that morning.

While a number of questions were asked, no context was provided as to the relevance or significance of them. In the circumstances I can understand why Mr R didn't think too much about the precision of the answers he gave. HSBC has argued that speaking to someone verbally and emailing them cannot be perceived as the same thing, but the evidence persuades me that Mr R, at the time, felt he'd confirmed the details and didn't appreciate the significance of not doing so verbally. He likely decided that all HSBC wanted to know was whether he'd checked the account details were correct and given he'd done just that, albeit via email earlier that day, I can understand why Mr R answered the questions in the way he did. I'm also satisfied that colloquially people do refer to various forms of communication differently and interchangeably – particularly when they do not associate much importance with the specific language they are using. While Mr R doesn't remember why he answered the questions in the way he did, on balance I'm persuaded Mr R felt he was being asked whether he'd confirmed the details with his solicitor without understanding the significance of not having done so verbally, and so just confirmed that he had.

In any event, under the CRM Code, in order for a firm to conclude a customer has ignored an Effective Warning it needs to have provided an Effective Warning in the first place. The definition of an Effective Warning is set out in the Code. Here HSBC simply asked Mr R a series of questions, presumably to ascertain whether he might be at risk of financial harm from fraud. But Mr R had told the call handler what the payment was for, and so the most obvious scam risk was that of a conveyancing email intercept scam. I don't think it was reasonable for HSBC to take answers to questions asked out of context at face value and in turn fail to provide an Effective Warning. None of the features of this common scam were conveyed via a warning during the phone call to Mr R. So in turn it cannot be said that he ignored an Effective Warning. In order for Mr R to understand how to protect himself he'd have needed to read between the lines of the questions HSBC was asking him; something I don't think he could reasonably have been expected to have done.

The next day when Mr R made the second payment HSBC spoke to him again. Mr R was asked similar questions and again confirmed he'd spoken to his solicitor the previous morning. Mr R was then given impersonation scam warnings rather than an Effective Warning relating to email intercept scams – the most obvious scam risk present at the time given the purpose of the payment. So again, I'm satisfied Mr R did not ignore an Effective Warning.

HSBC has accepted it didn't do enough to protect Mr R for the third payment and has reimbursed him 50% of that payment as a result.

HSBC again called Mr R ahead of processing the fourth payment. Most of this call consists of HSBC confirming Mr R's identity before it went on to 'ask' him that 'hopefully' he hadn't been contacted by a third party, responded to an unknown text or email and hadn't been tricked or forced into making the payment. Nothing HSBC said during this call related to the scam Mr R fell victim to and so again, I'm satisfied Mr R did not ignore an Effective Warning.

When Mr R made the final payment he was shown a written warning. This warning read as follows:

Check the invoice is authentic. Fraudsters can pose as a genuine business or a professional contact. If you receive an unexpected bill or an updated invoice with new account details it could be a scam. You must contact the payee to verify the payment details using a phone number from a trusted source i.e. website. If you continue without checking you accept the money may go to a fraudulent account and we may not be able to get it back.

I've asked Mr R what he thought about this warning. Mr R has told us he was just completely fooled into believing he was communicating with his solicitor. I've thought carefully about this. It's not clear how much attention Mr R paid to the warning; HSBC has been unable to show us evidence of how long he was on the warning screen for. Ultimately though, I don't think the warning was effective. I don't think it sufficiently brings to life the scam Mr R fell victim to – it doesn't sufficiently emphasise just how sophisticated the 'posing' of a contact can be. And so when a customer is liaising with who they believe to be their solicitor, who is using an identical email address, with no other red flags to the communication I can understand why a customer would move past it as it lacks impact and specificity.

Overall, even though it's I accept HSBC took steps to protect Mr R from financial harm from fraud I don't think it did enough. I'm not satisfied it provided Effective Warnings and in turn I do not think Mr R ignored any.

I've gone on to think about whether Mr R had a reasonable basis for belief that the payments he was making were legitimate. As I've explained Mr R made five payments and so I've thought about whether he had a reasonable basis for belief for all five payments, or whether this belief ought to have wavered over time.

Mr R fell victim to a classic email intercept scam – typically sophisticated and hard to detect. The fraudster clearly knew when Mr R was likely to be asked to make a payment for the property purchase and therefore the requests for payment weren't unexpected.

Here the fraudster's email address was identical to that of the genuine solicitor and so there was nothing to alert Mr R to the fact he was dealing with someone other than his solicitor.

While HSBC comments that the tone and formatting of the invoice was questionable, I don't agree. I cannot see how Mr R ought reasonably to have picked up on any differences to the usual tone of his solicitor, or that anything was amiss within the invoice – even with the benefit of hindsight I don't think there is anything particularly concerning about the fraudulent communication.

I've also thought about the confirmation of payee message Mr R was shown before he made the first payment.

HSBC says the message Mr R would've seen was a 'no match' message. But the evidence doesn't persuade me this was the case. We've asked HSBC to provide this message but it hasn't been able to do so. Instead HSBC's evidence suggests Mr R saw an 'unable to match message as follows:

'Before proceeding with the payment you should contact the beneficiary and confirm their account details via a phone number or an email from a trusted source'

I've thought about whether Mr R's basis of belief ought to have been affected by the unable to match COP message and whether the steps he took following sight of the message indicate he had concerns about the legitimacy of the payment request.

Mr R clearly considered whether the account details he'd been given were correct given he emailed the fraudster, posing as his solicitor to check (broadly in line with the advice given in the message), and, according to HSBC attempted to make that payment multiple times (presumably to check he'd inputted the name and account details correctly).

While HSBC considers the steps Mr R took show he had reservations about the payments he was making, I disagree. Mr R checked the account details with who he believed was his solicitor before proceeding and received a response essentially telling him the details were fine. HSBC argues this response was unconvincing but I don't think it was unreasonable for Mr R to think otherwise at the time, without the benefit of hindsight. The fraudster simply said that other people have reported the same issue but that it was ok to proceed.

It's relevant that since the inception of COP many legitimate account details don't match or can't be matched with the account holding name and here Mr R, completely unaware email interception had taken place, believed what he was told by who he thought was his solicitor. In those circumstances I don't find his actions or the belief in who he was dealing with was legitimate to be unreasonable. The fact he checked the account details does not in my view amount to doubt; rather someone exercising caution that they were sending the money to the right place.

By the time Mr R made the fifth payment he was told to pay a different account. I've thought carefully about whether Mr R ought to have questioned the legitimacy of the request and whether the reason given by the fraudster was plausible. I accept that someone with a good understanding of the features of this type of scam, or a good understanding of how company bank accounts work might've been concerned they weren't dealing with a legitimate person. But that wasn't the case with Mr R. He was completely convinced he was dealing with his solicitor and so quite reasonably thought nothing of the reason given for the change in account details.

I've considered whether the written warning and the content of the telephone calls from HSBC ought to have affected Mr R's basis of belief. I've concluded the telephone calls I've listened to and the warning I've seen weren't effective for the reasons I've explained above. It's broadly for the same reasons that I don't think HSBC's interventions ought reasonably to have impacted Mr R's belief that he was genuinely dealing with his solicitor. I'm satisfied Mr R was utterly convinced he was communicating with his solicitor and in the absence of properly bringing to life the key features of an invoice intercept scam I can understand why the interventions didn't resonate with Mr R at the time.

I've thought about what HSBC has said, in that this was a business, so it ought to have known better and HSBC has questioned whether M followed its own payment procedures. But I don't think HSBC can fairly rely on this as a reason not to refund M under the CRM Code. Mr R has explained that this is a small business, which was only set up recently following his retirement. The payments lost to the fraudster were the first payments made by the company and Mr R has explained that the 'payment process' was purely to follow the instructions of his solicitor. M is a small company and not a large corporate, as such I don't think it's unusual for it not to have a more 'formal' written policy.

Overall, I'm satisfied Mr R fell victim to a sophisticated scam and, given the particular circumstances of the case, had a reasonable basis for belief that he was paying his solicitor across all five payments made.

Finally I've thought about whether HSBC should've done more to protect Mr R from financial harm from fraud. The first payment triggered HSBC's fraud prevention system. I've already explained why I don't think the conversations or written warnings went far enough. I'm persuaded that had HSBC sufficiently brought to life the type of scam Mr R was most likely to be affected by based on the information HSBC had available to it, I think it's more likely than not Mr R would've understood the importance of verbally checking the account details with his solicitor ahead of making the payment. Had this happened, I'm persuaded M's losses would've been prevented.

This has a minimal impact on the outcome to this case given I've already concluded HSBC ought fairly and reasonably to have reimbursed M under the provisions of the CRM Code. My conclusions that HSBC ought to have prevented the scam only affect the dates the interest is payable from.

Putting things right

For the reasons explained, I uphold M's complaint against HSBC UK Bank Plc and instruct it to:

- Refund M the remaining money that was lost, being £42,401.10 and;
- Pay Interest at 8% simple per annum on that amount, from the date of each payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 28 April 2023.

Stephen Wise
Ombudsman