

## **The complaint**

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

## **What happened**

In January 2022, Mr F received a phone call from someone claiming to be from HSBC's fraud department. They told him criminals had tried to use his bank account and that they were working with the police to try to identify them. The caller then told Mr C they would transfer some money into his account and asked him to use that money to make two payments out of his account, as this would help them catch the criminals. Mr F then made two payments out of his account, for £4,900 and £9,600, to the bank details the caller gave him. Unfortunately, we now know the caller was a scammer.

The scam was uncovered after Mr C received a text message from HSBC about the £9,600 payment. He then called HSBC but it said it hadn't called him earlier or asked him to make any payments, and so explained he had been the victim of a scam. HSBC was able to reverse the payment of £9,600 as it hadn't yet left Mr F's account, but it couldn't reverse the payment of £4,900.

Mr F complained to HSBC that it should have done more to protect him. HSBC investigated but said it felt it had sufficient fraud prevention measures in place and that Mr F could have done more to prevent the scam. So it didn't agree to refund the money he'd lost. Mr F wasn't satisfied with HSBC's response, so referred his complaint to our service.

One of our investigators looked at the complaint. They didn't think HSBC had established that it provided Mr F with an effective warning before he made the payment. But they also didn't think Mr F had a reasonable basis for believing that the caller was genuine. So they thought HSBC should refund 50% of the £4,900 payment Mr F had lost. Mr F didn't agree 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.

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 in 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 F 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 F have a reasonable basis for belief when making the payment?*

This was a cruel scam and I appreciate that Mr F thought the call he received was legitimate and he was genuinely being asked to help with a police investigation. But there were a number of things which I think should have caused him concern about what was happening.

The call he received came from an unrecognised mobile number, rather than from a number associated with HSBC. And there doesn't appear to have been any number spoofing on the call, so it won't have appeared on Mr F's phone as coming from HSBC.

Mr F has said the caller knew his name and that he had an account with HSBC, and that the background noise on the call made it sound as if it was coming from a call centre. But the caller doesn't appear to have known any specific, personal information about Mr F or his account. And they didn't take him through any sort of security or identity verification process, as I would expect a genuine call from a bank to do.

Mr F was asked to download software onto his phone, so that the caller could check his bank account. But I wouldn't expect a genuine bank to need to do this, as it should be able to check customer's accounts through its own systems.

Mr F was also asked to make two payments, to two different individuals, but doesn't appear to have been given any explanation of who these people were or why the payments were being made to them specifically. And he was asked to enter false information about the reasons for the payments when making them.

And while Mr F received a text message saying money had been paid into his account, he didn't see this money enter his account or check that it had actually gone into his account – despite having the opportunity to do so when logging into his mobile banking app.

So I think there were a number of things about what was happening that should have caused Mr F significant concern. And I don't think the information he was given by the scammers should have been enough to overcome those concerns. And so I think HSBC has established that Mr F didn't have a reasonable basis for belief when he made the payment.

*Did HSBC meet its obligations under the CRM code?*

Even though I don't think Mr F had a reasonable basis for belief when making the payment, he may still be entitled to a refund of 50% of the money he lost if HSBC didn't meet its

obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

As this payment was for a relatively large amount, I think HSBC should have identified a scam risk in relation to it and so provided Mr F with an effective warning.

The CRM code says 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 F was shown when making the payment, and it says:

*“This could be a scam*

*Fraudsters may use social media or dating sites to build up a relationship with you. They’ll try to gain your trust before asking you to send the money. They may ask you for money for emergencies such as travel expenses or medical fees, or to invest in a new business.*

- *Talk to a different family member or friend before sending any money*

*Fraudsters can pretend to be someone you know to trick you into sending money to them. You must check where you are sending the money by contacting them in person.*

- *Stop and verify the person you’re dealing with is who they say they are.”*

While the warning does mention that this payment could be the result of a scam, the examples it gives about fraudsters using social media or dating sites and pretending to be someone you know aren’t relevant to the scam Mr F was the victim of. I don’t think the warning goes into enough detail about what the scam could look or feel like, or is clear enough about the severity of the possible risks. And so I don’t think this warning was specific or impactful enough to be effective in Mr F’s circumstances.

Overall then, I think HSBC has established that Mr F didn’t have a reasonable basis for belief when he made the payment, but also that HSBC didn’t meet its obligations under the code. So I think HSBC should refund 50% of the money Mr F lost, under the terms of the CRM code.

### **My final decision**

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

- Refund Mr F 50% of the £4,900 payment he lost as a result of this scam, or £2,450
- Pay 8% simple interest on this refund, from the date it initially rejected his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 March 2023.

Alan Millward  
**Ombudsman**