DRN-3750802

The complaint

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

What happened

E is a limited company and, in December 2021, it was paying an invoice for a contractor it had used. E had received the invoice from the contractor, sent it to its accountant to check the details and then instructed HSBC to make a payment of £25,000 to the payment details it received back from its accountant. Unfortunately, we now know scammers had intercepted the email from the accountant and given E incorrect payment details. So the payment was sent to the scammers and not the contractor.

The scam was uncovered as the contractor said it hadn't received the payment. HSBC initially tried to recall the payment, but was unable to. It then investigated the scam and said it was satisfied it had sufficient fraud prevention measures in place at the time, but that E could have caried out more checks before making the payment. So it didn't agree to refund the money E had lost. It was able to recover £2 from the bank the payment was sent to though. E wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think HSBC had established that it had shown an effective warning before E made the payment, or that E had made the payment without a reasonable basis for belief that it was genuine. So they recommended HSBC should refund the money E had lost. HSBC didn't agree, 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 E 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:
  - 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 these don't apply here.

Did E ignore 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 it says E was shown before making the payment, and it says:

"Check the invoice is authentic. Fraudsters can pose as a genuine business or a professional contact. If you receive an unexpected bill or 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 eg their 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."

While this warning does mention the possibility of fraudsters impersonating a professional contact, as they did here by intercepting E's accountant's emails, I don't think it goes into enough detail about what the scam could look or feel like or is specific enough to be effective in E's circumstances. And I don't think it's clear enough about the severity of the possible risks to be impactful in these circumstances either. So I don't think the warning HSBC showed was effective.

As I don't think the warning was effective, I therefore also don't think HSBC has established that E ignored an effective warning when making this payment.

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

HSBC has said that E could have carried out more checks before making the payment and that, if it had done the checks suggested in the warning it was shown, the scam could have been prevented.

But E had sent the invoice to its accountant to be checked, and had received confirmation back from its accountant that it was ok to pay the invoice. So I think it's reasonable that E thought it had checked the invoice was genuine and had done the checks suggested in the warning.

I've also seen copies of the email the scammers sent to E, pretending to be from his accountant. And I think this looks genuine and professional, and looks similar to other genuine emails E received from its accountant – which E has sent us copies of. The fake invoice the scammers had attached to the email also looks professional. So I think it was reasonable that E thought it was genuine.

E has also said it knew the contractor had recently changed legal status, so it wasn't concerned when the payment details it entered didn't match those on the account the money was going to. And I think this also seems reasonable.

I appreciate there were further checks E could have done, that could have uncovered the scam. But E reasonably thought it had already carried out checks to address this risk. The information E received from the scammers all looked professional, so I don't think it was unreasonable for it to think it was genuine. And I don't think there was anything else about the circumstances which ought to have caused it significant concern. So I don't think it was unreasonable for E not to do further checks.

And so I don't think HSBC has established that E made the payment without a reasonable basis for belief that it was genuine.

I therefore don't think HSBC has established that any of the exclusions to reimbursement under the CRM code apply here. And so, under the terms of the CRM code, I think HSBC should refund the full £25,000 E lost as a result of this scam – less the £2 that has already been recovered.

My final decision

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

- Refund E the remaining £24,998 it lost as a result of this scam

- Pay 8% simple interest on this refund, from the date it initially rejected the claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 18 January 2023.
Alan Millward
Ombudsman