

The complaint

Mr H is unhappy HSBC UK Bank Plc won't refund him for transactions totalling £2,400 that he made as part of a third-party scam.

What happened

In May 2022, Mr H says he saw an advert for designer clothing on a social media marketplace. After contacting the seller Mr H says he was asked to move communications to a different messaging forum. Mr H says he was told that the 50% discount on the goods would not be available unless he paid by bank transfer. Despite reservations, Mr H went ahead and made the agreed £800 payment. Mr H was then told he needed to make another payment of £800 as a deposit for the items. He was then asked for two further payments. Between 11 and 15 May 2022, Mr H made four payments totalling £2,400.00. Mr H reported the scam on 17 May 2022.

What I've decided – and why

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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; regulatory 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 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. There's no dispute here that Mr H authorised the payment.

However, where a customer makes a 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. When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have reimbursed Mr H in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (CRM Code) it has signed up to and whether it ought to have done more to protect Mr H from the possibility of financial harm from fraud.

It's not been disputed that Mr H was tricked into making the payment. He thought he would receive a number of goods in exchange for his money and this wasn't the case. But this isn't enough, in itself, for Mr H to receive a refund of the money under the CRM Code. The Code places a level of care on Mr H too.

The CRM Code

HSBC is a signatory of the CRM Code. The CRM Code 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.

One exception is whether Mr H made the payment without 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/or the person or business with whom Mr H 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 persuaded the concerns HSBC has raised about the legitimacy of the transaction Mr H was making are enough to support its position that he failed to meet his requisite level of care under the CRM Code for the payment he made. It follows that I think HSBC has been able to establish that it may choose not to reimburse Mr H under the terms of the CRM Code.

Having thought about what both sides have said and provided, I consider Mr H did not have reasonable basis for believing the payment he was making was for genuine goods and that the person he was transacting with was a legitimate seller.

Did Mr H have a reasonable basis for belief?

I need to consider not just whether Mr H believed he was sending money for goods, but whether it was reasonable for him to do so.

There have been a number of inconsistencies in the version of events Mr H has provided. I do understand it has been some time since the events in question. During the call with the investigator – Mr H confirmed that what he told the bank was more likely to be accurate given the passage of time.

The messages with the scammer start a few days before the first payment and Mr H asks for pictures to be sent. But these don't transpire. On Sunday 8 May 2022 the scammer confirms Mr H is 'booked in' for Wednesday and that payment should be made that day around 2pm.

Mr H says he had concerns about paying by bank transfer from the outset. When Mr H attempted the first payment, he received a warning (at 15:03) saying the payee did not completely match the account details and he also received a warning about goods and services scams. Mr H says he saw this warning and called the bank before making the payment. In one version of events Mr H said he couldn't get through to the bank or got cut off and in another version, he said the agent told him it was fine to proceed. HSBC has no record of any calls before the one when Mr H reported the scam and Mr H no longer has his call history as he sold his mobile phone to a friend. The transfer was actually made within the same minute (15:03:17) that the warning occurred – so I don't think there would have been time for a call with the bank before the first transaction. I'm therefore not persuaded such a call took place and I think if Mr H had such serious concerns, he should not have proceeded with the first payment without checking things further.

I think Mr H was right to be concerned and I'm not persuaded it was reasonable for Mr H to believe a genuine business selling items would ask him to start conversing by a social media messaging platform and ask him to send payment to a personal bank account. The name of the account did not have any connection with the name of the person he was messaging. Mr H also received no communication at the time confirming his order (although later sent us a confirmation email dated 25 May 2022 – quite some time after his order was originally placed). The items were also heavily discounted (50%) and Mr H confirmed the price was below the market value during the call in which he first reported the scam to HSBC. The offer appears to have been too good to be true and all of this warranted further checking before proceeding.

Throughout the day after the first payment is made, Mr H continues messaging the scammer asking for updates (on his order) and is eventually asked for a deposit of £800 which he is told will be refunded. He is then told it (the order) will take one hour after the deposit is paid for his order to be delivered. When Mr H first reported the matter to HSBC, he did say he found this funny but said he carried on anyway. Mr H said he did try and contact the bank again at this point. But again, HSBC has no record of any calls and Mr H has not been able to provide his call history showing a call was made. Again, I think if Mr H had doubts, he should not have proceeded and waited until he could actually get through to HSBC. A genuine business would not ask for more money towards an order that had already been agreed and promise to refund it when the items are received. Mr H does not appear to have really queried this with the scammer and the reason given (to speed up his order) does not seem plausible to me.

The order still does not arrive, and the promised refund not made, yet Mr H then proceeds to transfer another £500 followed by a further £300. The explanations given by the scammer and broken promises are so unrealistic to have been of serious concern. And I'm not persuaded Mr H had a reasonable basis for believing the payee was the person he was expecting to pay; that the payment was for genuine goods or services; or the person/business with whom Mr H transacted was legitimate.

Did HSBC meet its obligations under the CRM code?

Even though I don't think Mr H had a reasonable basis for belief when making the payments, 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. The CRM code says that, where firms identify scam risks, they should provide effective warnings to their customers. But the payments Mr H made as a result of this scam weren't for a particularly large amount and didn't leave the balance of his account at a particularly unusual level. They were also spread out over a number of days. So, I don't think the payments will have looked suspicious or out of character for him, and I wouldn't expect HSBC to have identified a scam risk as a result of it. And so, I don't think HSBC was required to provide an effective warning under the CRM code, or that it has failed to meet its obligations under the code by not doing so. I therefore don't think HSBC should be required to refund the money Mr H lost.

Did HSBC do enough to recover Mr H's funds?

I've thought about whether HSBC took reasonable steps to recover Mr H's funds once it was made aware, he was the victim of a scam. The first scam payment was made on 11 May 2022 and the last one made on 15 May 2022. Mr H reported the scam to HSBC at 17:00 on 16 May 2021 but then called back to put a on hold on things has he had heard from the merchant. Mr H called back the following morning and HSBC contacted the receiving bank a few hours later. The receiving bank confirmed that no funds remained on 17 May 2022. Even if there was a slight delay in HSBC contacting the receiving bank, I don't consider it would have made a difference as the funds had been removed and were likely removed before Mr H first notified HSBC of the scam – as fraudsters usually remove funds within hours.

I am sorry Mr H has fallen victim to a scam and lost money. But I'm not persuaded his complaint should be upheld.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 December 2022.

Kathryn Milne
Ombudsman