

The complaint

Mr Z is unhappy that HSBC UK Bank Plc won't refund the money he's lost to a fraudster.

What's happened?

Mr Z says he saw a private advert for a vehicle on a well-known online marketplace. He paid £6,500 for the vehicle via bank transfer on 27 September 2016 ('the payment'), but the car wasn't delivered to him as arranged. He subsequently discovered that the vehicle didn't really exist, and he had been scammed.

Mr Z has complained that:

- He visited a HSBC branch to report the scam on the morning after the payment was made, but the bank failed to act quickly to recover his funds.
- The payment was an unusual and out of character transaction, but HSBC didn't intervene with it.

HSBC has argued that there was no reason to intervene with the payment because Mr Z pre-notified the bank of the transaction he intended to make on 26 September 2016 – he explained the purpose of the transfer (recorded on HSBC's system as a vehicle purchase via an online marketplace) and where the funds had come from.

HSBC's records also show that Mr Z raised a complaint with the bank about this matter on 5 December 2016 – he said he'd been to a branch to discuss the scam and he'd found the staff to be unhelpful.

What did our investigator say?

Our investigator didn't uphold Mr Z's complaint. They said they wouldn't have expected HSBC to intervene with the payment given that Mr Z had pre-notified the bank that he was going to instruct it, and HSBC couldn't stop or cancel the payment after it had been made.

In responding to our investigator, Mr Z denied contacting HSBC on 26 September 2016. He said that he contacted the bank on 27 September 2016 for advice on how to make an online transfer. The bank explained what he had to do but didn't ask him for the purpose of the payment or give any other advice.

Mr Z's complaint about HSBC has now been passed to me to decide.

My provisional decision

I issued my provisional decision on 26 September 2022. I'll set out my findings below.

HSBC has said that the Lending Standards Board's Contingent Reimbursement Model ('CRM Code') was not in place in 2016 when the payment was made, so its requirements are not applicable. That is correct. But that's not the only consideration here.

It's common ground that Mr Z 'authorised' the payment. So, even though he didn't intend to pay a fraudster, the payment was 'authorised' under the Payment Services Regulations. HSBC had an obligation to follow Mr Z's payment instruction, and Mr Z is presumed liable for his loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that HSBC should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

HSBC has said that it spoke to Mr Z about the payment on 26 September 2016, but Mr Z says he spoke to the bank on 27 September 2016. I don't think it matters on which date the conversation took place. What's important here is that it's not in dispute that the parties spoke about the payment before it was instructed. So, HSBC was on notice that Mr Z intended to make a relatively high value transfer out of his account to a new payee, and the bank says it knew that the payment was to purchase a vehicle via an online marketplace. I've looked at Mr Z's account activity in the six months leading up to the scam and I consider that the payment was unusual and out of character – Mr Z didn't tend to make high value payments at the time. I appreciate that the payment may not have triggered HSBC's fraud detection systems when it was instructed because the bank had been pre-notified of it, but I can't ignore that the bank did have a conversation with Mr Z about the payment, and I think it's reasonable to expect HSBC to have asked some further questions about it at that time.

There's no available call recording or detailed contemporaneous note about what was said during the relevant conversation for me to consider. I asked the bank whether it would've warned Mr Z about the risk of scams during the call given that it says it knew he was paying for a second-hand vehicle advertised on an online marketplace, and vehicle scams are not uncommon. HSBC replied that the CRM Code wasn't in force at the time. It did not provide any evidence to show that it appropriately questioned or advised Mr Z about the risks of financial harm. So, I can't be satisfied that HSBC didn't miss an opportunity to appropriately question and educate Mr Z and/or prevent the scam and Mr Z's loss.

There's no suggestion that Mr Z was coached by the fraudster, so I think he would've spoken freely if HSBC had asked him some questions about the payment. And I think it's most likely that the scam would've become apparent at this point. I consider that HSBC had or ought to have had a good enough understanding of how vehicle scams work – including that fraudsters often purport to sell vehicles which don't exist or don't belong to them on online marketplaces and that 'sales' often go ahead without the fraudster allowing a customer the chance to inspect the vehicle they want to buy – to have been able to identify the risk of harm from fraud if it had asked him some probing questions.

If HSBC had done enough, I think it would most likely have been obvious to the bank and Mr Z that there was a risk of financial harm, and the scam would've unfolded without the

payment being made. Of course, HSBC could also have declined to make the payment altogether if Mr Z had still wanted to go ahead with it despite its warnings, and given the circumstances here, I think it would've been reasonable for it to do so.

I wouldn't have expected HSBC to interrogate Mr Z, and I acknowledge that the main perpetrator here is the fraudster. But overall, I think appropriate questions should reasonably have been asked in this case, and if they had been, and Mr Z had been appropriately educated about vehicle scams, he wouldn't have wanted to go ahead (at least without completing more checks to protect himself) or, if he did, HSBC could've declined to make the payment. Either way, I think the scam would've been prevented and Mr Z wouldn't have suffered a loss.

I might have concluded that it was appropriate for Mr Z to bear some of the responsibility for his loss in this case because he doesn't appear to have made any real attempts to protect himself from financial harm – he says he made the payment on the sole basis that the advert he saw on the online marketplace looked convincing. But from what I've seen, I'm not persuaded that HSBC did enough to recover Mr Z's funds, or that the full loss wouldn't have been recovered if it had done so.

HSBC doesn't have a written record of Mr Z's branch visit on the morning of 28 September 2016. But Mr Z has been consistent throughout his testimony and I have no reason to doubt that the visit took place when he says it did. I also note that the complaint Mr Z raised with the bank on 5 December 2016 refers to the branch visit. I would've expected the bank to act swiftly to try to recover any of Mr Z's funds remaining in the beneficiary account upon being notified of the scam, by contacting the receiving bank within a reasonable timeframe. There's no suggestion that it did so, and there's a strong possibility that some or all of Mr Z's funds could've been recovered if it had considering how quickly he reported the scam to the bank. In the circumstances, I think it's fair for HSBC to reimburse Mr Z's full loss on this occasion – I can't rule out that his full loss would not have been recouped had the bank acted as I would've expected it to.

For the reasons I've explained, I've provisionally decided to uphold this complaint and instruct HSBC to:

- Reimburse Mr Z's full loss; plus
- Pay 8% simple interest per year from the date of payment to the date of settlement.

Responses to my provisional decision

Both parties accepted my provisional decision. Neither party provided any new information or evidence for me to consider.

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.

As both parties accepted my provisional findings, and neither party provided any new information or evidence for me to consider, I see no reason to depart from the conclusions set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct

HSBC UK Bank Plc to:

- Reimburse Mr Z's full loss; plus
- Pay 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 24 November 2022.

Kyley Hanson
Ombudsman