

The complaint

Mr R complains that HSBC UK Bank Plc hasn't refunded him after he fell victim to an impersonation scam.

What happened

Mr R received a message from a number he didn't have saved on his phone. It began with, *'Hi mum its me x I have a new phone this is my new number. I took a new one because the other one didn't work properly, can you save this number and delete my old one?'*

Mr R replied and there was an informal exchange of messages, with what might be described as 'inside jokes' being used. Across those messages, the fraudster claimed to be Mr R's son.

Mr R told the fraudster he'd put £50 into his son's wife's account for his birthday, which the fraudster thanked him for. The fraudster then asked Mr R to call him because he had an issue he needed help with. Mr R tried to call but the fraudster said the call wouldn't connect properly and he was unable to answer, probably because of the new SIM card not being fully activated. The fraudster went on to describe the issue to Mr R.

The fraudster said he had some payments that needed to be made but that his banking app wasn't yet activated on the new phone. He asked if Mr R could make a payment of £1,669 for him. Mr R asked how his son would repay the money and the fraudster said he had money in savings he could send in a couple of days once his banking apps were working.

Mr R went on to send the money to the account details provided. He's explained that he was worried that his son was in some kind of trouble, to need to send the money so urgently. Mr R has told us how his son has been in trouble with gambling in the past and gotten himself into debt. He was concerned that's why he owed the payee money and, in his panic, he thought it might be some kind of loan shark.

Mr R has further explained that his panic and concern was exacerbated by the fact that his son is often stressed and busy, in part because he cares for his two children whom have neurodiverse conditions.

The fraudster then asked if Mr R could make a further payment, but Mr R said he wouldn't be able to help until he had the first lot of money back.

Mr R then didn't hear anything for a couple of days and started to get worried. He was able to speak to his son genuinely and the scam was uncovered.

Mr R raised a fraud claim with HSBC. It considered whether Mr R ought to be reimbursed under the Contingent Reimbursement Model (CRM) Code. But it said that Mr R had failed to meet his requisite level of care because he'd ignored an effective warning.

One of our investigator's looked at Mr R's complaint after he referred it to our service. He said that HSBC had unfairly withheld a refund under the CRM Code. He didn't believe it had provided an effective warning.

Once the case was with our service HSBC had also suggested Mr R hadn't held a reasonable basis for believing he was legitimately speaking with his son, invoking a second exception to reimbursement under the Code.

Our investigator didn't find Mr R had lacked a reasonable basis of belief. He could understand why Mr R acted the way he did given his son's history. He noted there was nothing alarming in the exchange of messages that ought to have made Mr R suspicious of a scam.

He said, because the circumstances and evidence didn't show either exception to reimbursement under the Code could be applied, Mr R should receive a full refund of his loss, plus interest calculated at 8% simple from the date the claim was declined to the date of reimbursement.

HSBC responded and, after some further discussion, accepted our investigator's position with regards to the warnings not being effective. It offered to refund 50% of the loss on that basis. But it maintained that Mr R didn't have a reasonable basis for belief, stating there were *'so many red flags and assumptions made by Mr R'*, and that, *'Mr R has a responsibility to take care and due diligence which did not happen here'*.

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

There has been a minor development since the case has been passed to me. Our investigator has explained to Mr R that the interest element of the redress ought to be changed. Instead of receiving an interest payment calculated at 8% simple per year, it's to be calculated at the rate applicable to the account the money was lost from. That's because whilst Mr R hasn't had access to the funds, he didn't have any particular plans to spend the money and he's not lost out on an opportunity or purchase as a result of HSBC's decision not to refund. Instead, he's said he would likely have saved the money. And so the investigator said the account rate was the fair and reasonable rate to use.

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 upholding the complaint. I'll explain why.

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 says one or more of those exceptions applies in this case.

HSBC originally (in its final response) said Mr R ignored what it considered to be an effective warning. But HSBC has since accepted our investigator's findings on that point and agreed to a 50% refund. So there's no need for me to consider that element of the complaint further.

What remains is HSBC's contention that Mr R didn't have a reasonable basis for believing he was speaking with his son. HSBC says Mrs R ought to have noticed what it refers to as 'red flags' and done more to make sure it was his son he was talking to by carrying out 'due diligence'.

It's for me to determine whether the remaining exception to reimbursement can be fairly applied in the circumstances of this case.

Did Mr R have a reasonable basis for believing the purpose of the payment and the person he was speaking to were legitimate?

It's important to remember when dealing with scams like this, and in fact any scams, that customers are generally not in a state of alert when it comes to detecting and preventing fraud. People don't expect to be scammed in their day to day life. And I think it's easy for the banking industry to become almost 'hyper-sensitive' to scams, where the expectation is that

all details of any interaction ought to be questioned by a customer. Particularly when reviewing a case of fraud in hindsight.

But that isn't a realistic view of how individuals go about their lives and the expectation is set too high.

Unless there is something within an interaction that clearly seems out of place or unusual, people will often not detect that something might be wrong. Scams like this succeed because fraudsters are adept at exploiting human nature and behaviours. Mr R's case is a prime example of such exploitation.

HSBC says there were '*so many red flags and assumptions*' but that's looking at the circumstances of the case from the perspective of reviewing, or perhaps anticipating, a scam. That isn't a real world or real time view of what happened. The bank has highlighted steps that Mr R *could* have taken to prevent the scam. But the Code doesn't require an assessment of whether the scam *could* have been prevented. It's whether the customer had a reasonable basis for believing they were making a legitimate payment at the time.

It's clear from the content of the messages that Mr R immediately believed he was speaking with his son. And he even determined which son (for he has other children) was most likely contacting him. Mr R's early belief was cemented by the initial interactions with the fraudster, where the 'inside jokes' were picked up on and used by the fraudster. It's in considering these interactions that even moving past the opening message (being addressed '*hi mum*,' instead of '*hi Dad*') without alarm can be understood as reasonable. There was even an interaction about Mr R's son's birthday which the fraudster cleverly reacted to.

What followed was a not entirely unexpected request for help with a payment. This was set up through texts with the fraudster, but it's important to note that calls were suggested and attempted to help lend legitimacy to the story about the broken phone. Whilst unsuccessful, the fraudster had made it appear as though he was happy to speak to Mr R on the phone.

I say the request for help wasn't unexpected because Mr R has explained how he has helped his son out before, specifically when he'd gotten into financial trouble through gambling. So the request did fit past circumstances, making it not entirely unexpected.

The conclusions Mr R drew about the purpose of the payment weren't unreasonable in the circumstances. I can see why Mr R felt panicked to act quickly. He thought his son was probably in some trouble that he urgently needed help getting out of. This is exactly the kind of emotional response that's being targeted in these scams – where parents are tricked into believing they are helping their children, often urgently, through clever manipulation by fraudsters. It's then understandable, and reasonable, that Mr R didn't question the circumstances as he otherwise might have done. That doesn't mean his basis of belief was unreasonable. The fraudster played on an emotional response, that Mr R was unlikely to be particularly aware of at the time.

HSBC has questioned why Mr R didn't tell his son to make a payment via telephone banking, or to use his wife's phone. This isn't a complete list of its objections, but they are all of a similar theme. I've already said how an assessment under the Code doesn't mean questioning whether a scam might have been prevented. But the objections raised by HSBC can all be described in that way. I don't find it's otherwise presented sufficient evidence or argument to say that Mr R's claim under the Code ought to have been declined because of a lack of a reasonable basis of belief.

Putting things right

I'm satisfied that Mr R ought to have received a refund from HSBC as neither of the potential exceptions to reimbursement apply. It is then fair and reasonable that it refund him now.

HSBC should:

- Refund the £1,669 Mr R lost to the scam
- Pay interest on that amount at the rate applicable to the account the money was sent from, calculated from the date the claim was declined to the date of reimbursement.

My final decision

I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 April 2023.

Ben Murray
Ombudsman