

The complaint

Mr and Mrs L complain that HSBC UK Bank Plc ('HSBC') won't refund the money they lost in a scam.

What happened

Mr and Mrs L have a joint account with HSBC. As it was Mr L that fell victim to the scam, I'll mainly refer to him in this decision.

What Mr and Mrs L say

Mr L says that he fell victim to a parcel delivery phishing scam and provided some personal information and account details when he made a small payment.

A few weeks later Mr L noticed some missed calls from an HSBC number and so called the number to find out what was happening. The call was answered by HSBC. During the call Mr L expressed frustration that HSBC had called that day and the day before but when he called back HSBC couldn't tell him what the call was about. The advisor said she couldn't see anything, but it was possibly a call about potential fraud, so she agreed to transfer Mr L to the fraud team. Mr L didn't proceed with a conversation with the fraud team though.

Shortly afterwards Mr L received a call from the same number as the missed calls (and the number Mr L had called). Given his earlier call to HSBC on the same number, Mr L believed the call was from HSBC. The caller knew information about Mr L and went through a form of security before asking him about attempted transactions on his account. Mr L confirmed he hadn't made the payments and was told his account was at risk. The caller also knew details of Mrs L's account and said there'd been an attempted transfer from it. Mr L was told that the attempted payments had been held for checks and the only way to stop them altogether was to move funds to a temporary account so that funds wouldn't be available in his usual account. The interim account would be randomly generated, and the funds would later be returned to Mr L.

Funds were transferred from Mrs L's account and then Mr L made the payments the caller told him to make from their joint account. He made two payments of £7,710.12. The next two payments of £2,289.88 and £4,367.62 were later reversed.

The call dropped and at this stage Mr L saw a message from HSBC and realised he'd been the victim of a scam. He called HSBC to report what had happened. Mr L thinks HSBC didn't do enough to warn him about safe account scams or to recover his funds.

What HSBC say

HSBC is a signatory of the Lending Standards Board (LSB) Contingent Reimbursement Model (CRM Code) and considered Mr and Mrs L's claim under it. Having done so, HSBC decided not to reimburse them. It said that Mr L ignored effective warnings and that he didn't do enough to verify who the caller was before making the payments. Mr L wasn't happy with HSBC's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full. This was because HSBC hadn't demonstrated that any of the exceptions to reimbursement set

out in the CRM Code could reasonably be applied. In particular, Mr L reasonably believed the call was from his genuine bank and hadn't ignored an effective warning. In any event, the investigator felt that HSBC should have intervened and discussed the out of character payments with Mr and Mrs L and had it done so, the scam would have been uncovered.

Mr and Mrs L accepted the investigator's view, but HSBC did not. In summary, it said:

- Mr L acted carelessly in choosing the friends and family payment option when there was an unexpected request from your bank option.
- The new payee warning and friends and family warning it provided at the time of payment were effective in accordance with the CRM Code. The new payee warning specifically said that HSBC will never ask a customer to move money, but criminals will.
- The CRM Code requires HSBC to take reasonable steps to provide a customer with an effective warning and an electronic warning in the payment journey meets that requirement. This service needs to be realistic in applying the CRM Code and shouldn't expect perfection based on hindsight. HSBC isn't required to avoid a scam but should make a customer aware of reasonable steps they should take to reduce the risk of falling victim to one.
- The warning provided was specific as it specifically mentions safeguarding and in light of the mandatory language used Mr L acted unreasonably by not calling HSBC before moving funds. The request to call HSBC on the number on the back of Mr L's card ought to have positively impacted his decision-making. There is a large amount of wording in the warning because HSBC identified several scam risks.
- The warning given also referred Mr L to HSBC's fraud centre. The LSB in its paper on adherence to the CRM Code in September 2022 saw using links like this as a positive development.
- The investigator said Mr L was coached to choose the friends and family payment reason, but this is not what he told HSBC.

As the parties don't agree, the complaint has been passed to 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.

In a conversation with the investigator Mr L suggested he hadn't authorised the scam payments although at other points said he had. I've seen evidence from HSBC that satisfies me that Mr L authorised both transactions although I accept that at the time, he didn't know he was paying a scammer.

The CRM Code requires firms to reimburse customers who have been the victims of authorised push payment scams like this in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case. It says that Mr L ignored an effective warning it gave during the payment journey, and he made the payment without a reasonable basis for belief 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 he was transacting with was legitimate.

Having considered the evidence, I am satisfied that under the terms of the CRM Code, HSBC should have refunded the money Mr and Mrs L lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case and will explain why.

Reasonable basis for belief

I'm satisfied that HSBC has not shown that Mr L lacked a reasonable basis of belief because:

- When Mr L saw he had missed some calls from an HSBC number he called HSBC back on that same number. He got through to a genuine HSBC advisor and asked why he'd been called. The advisor wasn't able to identify why HSBC might have called Mr L and said the calls might have related to a potentially fraudulent payment.

Mr L then received a call from the same number he'd previously received calls from which he had already verified was HSBC. In the circumstances, I think he acted reasonably in believing the scam call was from HSBC. The fact that the number was spoofed, and Mr L had called his genuine bank from the same number not long before, were the main reasons he fell victim to this scam. At no point did HSBC warn Mr L about number spoofing.

- Although Mr L didn't realise it at the time, he provided personal details to a scammer when he fell victim to a phishing scam a few weeks before the safe account scam. So when Mr L received the scam call the scammer knew information about him including his name, address and account details and took Mr L through a security process. This helped to persuade Mr L that the call was genuine.
- Whilst I don't consider Mr L was vulnerable as set out in the CRM Code I'm mindful that he has a medical condition that he discussed with HSBC when he discussed the scam that likely impacted his decision-making at the time of the scam. The CRM Code refers to all the circumstances at the time including the characteristics of the customer, so I think Mr L's condition is relevant when deciding if he had a reasonable basis for believing he received a call from his bank asking him to transfer funds.

I've gone on to consider whether Mr and Mrs L ignored an effective warning when setting up the payee or making the payments.

Effective warning

I have carefully considered HSBC's representations about the warning it gave. HSBC say that when Mr L made the first payment request, he was presented with a new payee warning that said:

FRAUD ALERT: Don't fall victim to a scam. Criminals pretend to be people you trust, like a company you'd pay bills to, HSBC or even the police.

HSBC will never ask you to move money, but criminals will. Find out more at our [Fraud and Security Centre](#).

During the payment journey Mr L was given a warning based on the payment reason he chose – paying friends and family. This warning covered a number of potential scam risks and was lengthy. The relevant section for this complaint said:

"Do not proceed if you are being asked to move money for safeguarding purposes. Call HSBC using the number on the back of your card to verify the request."

HSBC say it didn't provide a warning in respect of the second payment, but the same warning applied.

The warnings Mr L was provided with included some useful information, such as the fact that criminals can pretend to be from trusted organisations including HSBC and that HSBC will never ask someone to move money. But neither warning was prominent. The new payee

warning was in ordinary font and didn't require Mr L to click anything to move on from it. The relevant wording in the friends and family warning was some way into a lengthy warning.

I don't consider the warnings Mr L saw went far enough to bring to life the common features of the scam he fell victim to and positively influence his decision making. There wasn't enough information to bring to life what this type of scam looks and feels like, so it didn't resonate with Mr L when he made the payment. For example, the warnings didn't mention that numbers can be spoofed or appear to be genuine numbers. This is particularly important in this case, as Mr L called his genuine bank after receiving missed calls from the same number. And the warnings don't mention being told an account is at risk meaning action needs to be taken.

The relevant wording within the friends and family warning isn't prominent and refers to being asked to move money for 'safeguarding purposes'. I don't consider this term to be clear. In any event, Mr L thought he had verified the number shortly before making the scam payments as he'd called the same number and spoken to a genuine HSBC advisor. So I can see why the warning didn't influence his decision making at the time of making the payments.

Overall, I'm not persuaded Mr L was provided with an effective warning and so HSBC hasn't been able to show that he ignored an effective warning when making the payments.

Should HSBC have done more to protect Mr and Mrs L?

As well as its responsibilities under the CRM Code, HSBC should fairly and reasonably have had systems in place to look out for unusual and out of character transactions or other signs that might indicate a customer was at risk of fraud (among other things).

I don't consider the two payments to be significantly unusual or out of character given Mr and Mrs L's normal account and payment history. In January 2022, a few months before the payments, there were two payments of £10,000 each that appear on their bank statement on consecutive days. The significance of this finding is that interest should be paid from the date HSBC made its decision under the CRM Code rather than from the date of payment.

Recovery

Mr L says HSBC didn't do enough to recover his funds. I've listened to a call in which an HSBC advisor tried to contact the receiving bank soon after the scam was reported but the lines were closed. Advice was given about alternative methods of contacting the receiving bank, but I can't see that an alternative way was used until the following day.

I consider HSBC should have contacted the receiving bank sooner so have considered whether doing so would have made a difference to the amount that could be recovered. Information this service has obtained from the receiving bank shows that even if HSBC had contacted it sooner no further funds could have been recovered as the funds were moved out of the receiving account within minutes. Scammers often move funds out of accounts quickly to avoid them being claimed back. So whilst I agree that HSBC could have done more, I'm not making an award because earlier action wouldn't have made a difference in this case.

Interest

Before the scam, when funds were transferred from Mr and Mrs L's joint current account, £3,000 was transferred into the account from a joint savings account and £13,915.89 from Mrs L's current account. I consider that were it not for the scam the funds would have remained where they were. So Mr and Mrs L should receive account interest rate on £3,000 moved from their joint savings account and 8% simple per year on the remaining amount lost in the scam.

My final decision

For the reasons given above, I uphold this complaint and require HSBC UK Bank plc to:

- Refund Mr and Mrs L the £15,420.24 they lost in the scam less any amount already recovered and returned to them.
- Pay interest on £3,000 at the rate that applied to Mr and Mrs L's joint savings account and 8% simple per year on the balance from the date HSBC should have refunded Mr and Mrs L under the CRM Code to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 21 June 2023.

Jay Hadfield
Ombudsman