

The complaint

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

What happened

Mr J had been looking to buy a campervan and, in May 2022, he found one he was interested in on an online auction website. He contacted the seller to ask about buying it outside of the auction, and was quoted a price and sent a number of additional photos of the campervan. As he was happy with the price, Mr J then made a payment of £11,500 from his HSBC account to the account details the seller had given him, and the seller said the campervan would be delivered to him around a week later. Unfortunately, we now know the seller was a scammer.

On the day the campervan was supposed to be delivered, the scammer contacted Mr J to say there had been delays with the company that was supposed to be carrying out the delivery, and that it would be delivered a few days later. But the campervan wasn't delivered on this later date either and the scammer stopped responding to Mr J. Mr J then reported the payment to HSBC as fraud and asked it to refund the money he had lost.

HSBC investigated but said it had given Mr J a warning with advice on how to avoid potential scams before he made the payment. And it said it thought Mr J could have carried out further checks before making the payment. So it didn't agree to refund the money he had lost. Mr J 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 Mr J made the payment without a reasonable basis for believing that it was genuine, or that he had ignored an effective warning before making the payment. So they thought HSBC should refund the money Mr J had lost as a result of the scam, plus interest. HSBC didn't agree with our investigator, 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 Mr J 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:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o 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 Mr J ignore an effective warning in relation to the payment?

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 Mr J was shown when making the payment, and it says:

"Caution – this could be a scam

WARNING – If someone has told you to mislead us about the reason for your payment and choose the wrong payment type, stop. This is a scam.

Fraudsters may advertise on social media, online marketplaces and on websites that seem legitimate but have actually been set up by fraudsters. They can also pretend to be a genuine business, access your emails or invoices, and ask you to make a payment to different account or provide you with account details for a new payment.

What you need to do before making the payment

- *Stop and think – if you are contacted by email, examine the email address, look out for any grammatical errors, or a change in content or format. Check it was sent by the expected company.*
- *If the payment details have changed, contact the person or company using a phone number you have checked is genuine.*
- *Stop and think – does this seem right, is the offer for a limited time or too good to be true?*
- *Beware of false websites and reviews. Thoroughly research the seller online on official websites before making a purchase.*

- *Do not proceed if you are asked to pay by bank transfer rather than using a more secure way to pay, for example credit or debit card, which provides more protection against fraud.*
- *If you are purchasing a high value item, for example a car, make sure you physically see it before making a payment.*

Visit our Fraud Centre for further guidance on how to undertake the required checks before proceeding.

WARNING

By choosing to continue, you agree you've read our warning and are happy to proceed. You accept that we may not be able to recover your payment if it is sent to a fraudster's account. If you're unsure, please stop immediately."

While this warning does talk about fraudsters advertising on online marketplaces and gives examples of steps to take to avoid fraud that were relevant to the scam Mr J fell victim to, a number of the other things the warning mentions aren't relevant to Mr J circumstances. The warning first mentions someone asking the customer to mislead HSBC about the reason for the payment, which hadn't happened here. And the first few bullet points talk about being contacted by email, payment details changing or an offer being available for a limited time, none of which are relevant to this scam.

I also don't think this warning goes into enough detail about what this kind of scam might look or feel like. And I don't think it was clear enough about the severity of the potential consequences of proceeding with the payment, or about how unlikely it was to be able to get the money back if it was sent to a scammer. So I don't think this warning was specific or impactful enough to be effective in Mr J's circumstances.

And, as I don't think the warning was effective, I therefore also don't think HSBC has established that Mr J ignored an effective warning when making the payment.

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

HSBC has said Mr J could have carried out more checks before making the payment and that, if he had done some of the checks or followed some of the steps mentioned in the warning he was shown, the scam could have been prevented.

But Mr J had seen the campervan advertised for sale on a reputable website, by a seller who'd been on the website for a number of years and had generally positive reviews. And he'd then contacted the seller, exchanged a significant amount of correspondence with them and been sent a number of photos and further details about the vehicle. So I think it's reasonable that this made the sale seem genuine to him.

The price Mr J was given for the campervan was within the range values he'd been looking at. And while these types of vehicles are difficult to value accurately, I've not seen any conclusive evidence that the price he was given was too good to be true. So I don't think there was anything about the price which should have caused him significant concern.

Mr J was given the option to come and see the vehicle in person and pay at that point, but this was inconvenient for him as he was away for work at the time. So while he hadn't viewed the vehicle in person, as the warning suggested, he had been offered the chance to do so. So I think it's reasonable that this didn't cause him significant concern.

Mr J had done several online checks into the campervan and its tax and MOT history. And these showed the registration matched the make and model he had been shown, the campervan had been correctly taxed, and didn't uncover any red flags or potential issues. So I think it's reasonable Mr J thought he had checked that the campervan was genuine.

Mr J has also said he was under the impression he was making the purchase through the online auction website, and so was covered by the protections the website offered. And I've seen a copy of the order confirmation email he received which does appear as if it has come from the online auction website, explains how he should make the payment and mentions the protections for the buyer. So, while he had actually made the payment outside of the website and wasn't covered by any of its protections, I don't think it was unreasonable that he thought he was protected.

I appreciate there were further checks Mr J could have done, or further steps he could have taken, that could have uncovered or prevented the scam. But I don't think it was unreasonable for him to think he had carried out sufficient checks or was protected against these risks. And I don't think there was anything else about the circumstances which should have caused him significant concern. So I don't think it was unreasonable for him not to do further checks.

And so I don't think HSBC has established that Mr J 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 CRM code, I think HSBC should refund the full £11,500 Mr J lost as a result of this scam.

My final decision

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

- Refund Mr J the £11,500 he lost as a result of this scam
- Pay 8% simple interest on this refund, from the date it initially rejected his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 April 2023.

Alan Millward
Ombudsman