

## **The complaint**

Mr R is unhappy HSBC UK Bank Plc will not refund the money he lost after falling victim to a vehicle purchase scam.

## **What happened**

The detailed background to this complaint is well known to both parties and was outlined in the provisional decision I issued on 3 April 2023.

In summary, Mr R thought he was buying a used car advertised for sale by a private seller on a social media marketplace. The seller told Mr R he'd recently retired abroad, making the car unsuitable for him as it was a right-hand drive model. The seller explained the vehicle was in storage in the UK with a logistics company based near the South West Coast and that the logistics company would be handling the sale on his behalf.

Mr R was told that the purchase price would be £14,500 including shipping and that he would have a five-day inspection period where he would be able to get a full refund if he wasn't satisfied with the car's condition.

Mr R says he did check the logistics company on Companies House. He adds that its website looked authentic. He explained he'd received a report on the condition of the car, a contract that looked like a genuine legal document and that he'd seen the seller's passport. Mr R explained that he cross referenced the picture of the seller from the passport to a profile he'd found on a business networking social media website and everything matched up. Mr R asked about the insurance arrangements during the test drive period and was told that it would be insured for him.

On 18 January 2022, Mr R made a payment of £14,500 to the account details he'd been given by the logistics company. The account he paid was in a different name to the logistics company. On the day Mr R was expecting the car to be delivered, he received a message explaining that the vehicle transporter had been involved in an accident and the funds would be returned to him within 72 hours. When Mr R didn't receive his money back and was unable to contact anyone, he suspected he'd been the victim of a scam.

HSBC tried to recover the funds that had been sent but sadly none remained. The bank concluded it was not liable for refunding the loss. It felt Mr R could have taken more responsibility and conducted more checks before making the payment.

Our Investigator looked into the complaint and recommended it be upheld. She noted that HSBC is a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). This means HSBC has made a commitment to reimburse customers who are victims of authorised push payment scams except in limited circumstances. Our Investigator didn't think any of those circumstances applied here.

She thought HSBC should have done more to warn Mr R before he made the payment. She was persuaded that Mr R did enough to ensure he was purchasing a genuine vehicle and communicating with a genuine seller. She didn't think the situation was too good to be true.

HSBC didn't accept the Investigator's view and asked for the complaint to be referred to an Ombudsman. It said its warning stressed the importance of making sure the goods and business are genuine and highlighted the need to be wary of deals that seemed too good to be true. It said the purchase price for the car was considerably under its market value. It thought the scam would have been uncovered if Mr R had tried to see the car in person. It also challenged what Mr R saw when checking Companies House, pointing out the information that came up for the logistics company when the bank checked was concerning as it returned two companies with the same name, one which had been dissolved around four years before. It said that if Mr R didn't see this and question it further in his own mind, he had missed an obvious red flag.

Mr R said the way the car was to be delivered to him is how online car sales companies operate. He pointed out there are many companies on Companies House with variations of the name of the logistics company he thought he was dealing with and the one he saw matched the paperwork and contracts the fraudster provided. He explained he didn't feel the car's price was too good to be true and simply thought he'd found a good deal. He included links to other adverts he'd found where there was no real difference in the price. He said the warning wasn't specifically about buying a car and for him, this was a routine payment made without any call or other warning from the bank.

As no agreement could be reached, the complaint was referred to me.

I considered the matter afresh. An extract from my provisional decision that explains the reasons why I was proposing a different outcome to our Investigator is included below:

*"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.*

*It's not in debate that Mr R has fallen victim to a scam. It's clear he was tricked into making the payment. But this isn't enough, in and of itself, for Mr R to be refunded by the bank. I must consider whether HSBC has any responsibility to refund the money that he sent. Having carefully considered the circumstances of this complaint, I am unable to fairly say that HSBC should be held liable for all of Mr R's loss. I can appreciate this will be a very disappointing outcome for Mr R, especially as it is less favourable than the position our Investigator proposed, so I will explain my current thinking.*

*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. 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 them, even though they authorised the payment.*

*When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have fully reimbursed Mr R under the provisions of the CRM Code and whether it ought to have done more to protect Mr R from the possibility of financial harm from fraud.*

*The CRM Code*

*HSBC is a signatory of the CRM Code which 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. HSBC has argued that exceptions apply to this case.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to the information provided
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

\*Further exceptions outlined in the CRM Code do not apply to 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 think HSBC failed to provide Mr R with an effective warning at the time he made the payment and that failure is likely to have had a material effect on preventing the scam. But I also consider the concerns HSBC has raised about the legitimacy of the transaction are enough to support its position that Mr R lacked a reasonable basis for belief. I will explain why.

Did Mr R have a reasonable basis for belief?

I accept that this was a multi layered scam with each phase of it being deliberately designed to lull the victim into a false sense of security. But I need to consider not just whether Mr R believed the payment was for genuine goods or the business he was paying was legitimate, but whether it was reasonable for him to do so.

It's clear that Mr R did do some checks into the situation and I do recognise he has never purchased a car before. I don't expect Mr R to know exactly what checks to do to uncover a scam risk he is unaware of. I have thought carefully about the information that was available to Mr R at the time to consider whether he should have scrutinised the situation more closely. Having done so, I am not persuaded that Mr R had a reasonable basis for believing the payee was the person the he was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

Mr R says the car was not too good to be true and he's provided details of other similar vehicles being advertised for sale at a comparable price. But having looked carefully at the adverts Mr R has provided, I don't think he is comparing like for like.

His search shows the model of the car and the mileage, but adding in the precise specification of the car he thought he was buying makes a considerable difference to the price. The bank suggested the market value for this vehicle at the time of the scam was between £18,000 and £23,000. This is broadly in line with the industry vehicle valuation guides I have checked, which place the market value of this vehicle at the time of the scam towards the higher end of this range. On this basis, I think the price the car was advertised for was low and this is a potential indicator that the situation is not what it seemed. Even if Mr R didn't realise it at the time, this was a significant discount for a vehicle of this specification. When saying this, I have taken into account the seller's story that the car was unsuitable for their needs which might have otherwise explained a keen price for a quick sale.

But I am mindful that people can and do find good deals on online marketplaces. A potentially low price in and of itself isn't enough to say that Mr R didn't have a reasonable

*basis for belief. I have to consider the price in the round, whilst also thinking about whether there was anything else about the situation that ought to have caused Mr R to question the deal further before deciding to go ahead.*

*When requesting payment, the fraudsters told Mr R to pay the escrow account given in the invoice. However, the account details it provided were for a completely different company to the logistics company Mr R thought he had been corresponding with. I think Mr R should have been more concerned about that than he was. He took a lot on trust. From researching the company online, they appear to be a landscaping company.*

*Mr R explained that he was following the instructions he was given as per the contract. Whilst I do accept that buying a car online has become far more common in recent years, I think it's also fair to say that in these circumstances – particularly where the selling business isn't well known and isn't known to the customer – you would expect a higher degree of caution on the customer's behalf, to ensure that all other elements of the sale appear legitimate and that any red flags are questioned. Mr R was spending a lot of money. He's explained he felt reassured because both the logistics company and the seller were saying the same things to him about what to expect, but I don't think this was enough to give him confidence that the situation was legitimate.*

*There has been considerable discussion about exactly what Mr R checked and saw on Companies House. The logistics company had a similar name to at least three other companies on Companies House. It seems likely this was deliberate subterfuge on the fraudster's behalf. I have listened to a recording of a conversation Mr R had with our Investigator where they both checked the website at the same time and clarified exactly what Mr R saw. I accept, on balance, that the record Mr R checked was for an active company involved broadly in transportation. But there were inconsistencies with this record that Mr R would not have needed to look far to find. Mr R thought he was dealing with a company based near the South West Coast. He's said the details he checked matched to the contract he was given. But from what I have seen and heard, the business he checked was based in the North East of England. This information was not hard to find on the Companies House record and I've not seen anything to show that Mr R noticed this discrepancy or that he made further enquiries into it.*

*I'm also mindful that Mr R did ask why a logistics company would carry out a car inspection. The response he received from the seller was defensive and didn't answer the question directly. I think Mr R had some awareness that something was potentially amiss. When he spoke to our Investigator, Mr R described the situation as "on the border of being feasible". He also said "on Facebook Marketplace, I'd been to see other cars err for sale... and because this one was in "storage", I was like, well okay, you know, I sort of, my mind had convinced itself that it was legit because I'd been to see other ads on Facebook Marketplace people selling cars that were genuine [sic]."*

*Overall, I think Mr R took a risk when making this payment. I don't dispute that he made some checks, but in my view he was also acutely aware of some things that didn't add up.*

#### *Effective warnings*

*Even though I don't think Mr R had a reasonable basis for belief when making the payment, he may still be entitled to a refund of 50% of the money 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 APP scam risks in a payment journey, they should provide effective warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of*

*whether compliance with that standard would have had a material effect on preventing the scam.*

*The CRM code sets out 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. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.*

*HSBC says it did identify a scam risk. It considers the warning that was presented to Mr R at the time that he made the payment was an effective warning and that Mr R has failed to meet his level of care because he ignored it.*

*HSBC says Mr R was presented with the following information:*

***“Take Care When Sending Money Online***

*If an offer sounds too good to be true, it could be a scam. Use your debit or credit card to get more protection against fraud.*

*Only pay by bank transfer if you're sure the goods, service, person or business is genuine.*

*We may not be able to recover payments that turn out to be fraudulent.*

*Visit our Fraud Centre to find out more.”*

*I am not persuaded this information is specific and impactful enough to meet the requirements of an effective warning aimed at disturbing a vehicle purchase scam and I am not persuaded that Mr R ignored an effective warning by failing to take appropriate action in response to it.*

*I accept the warning is directed at purchase scams where the customer is buying something at a discounted price. But it fails to really bring alive what a scam of this nature looks like. It didn't explain that fraudsters can list adverts for cars they don't actually own and ask for payment upfront through escrow accounts. It didn't explain the steps Mr M could have taken to verify that the goods or business are genuine. By failing to do this, it makes it much easier for a customer, like Mr R, not to recognise their own circumstances. It's clear from everything that Mr R has said that he did not know what scams like this look and feel like. The warning he was presented with does not make enough impact and did not go far enough to grab Mr R's attention.*

*If HSBC had really brought to life how this scam operates with an effective warning and given advice on how customers can protect themselves from this type of scam, and then explained the potential consequences of continuing with an irrevocable payment, I think this would've been important contextual information that would've affected Mr R's decision making. I think Mr R would have most likely followed this advice and taken additional steps to protect himself.*

*I don't think the information HSBC provided did enough to make Mr R aware of the risks of buying a car online. The information Mr R was presented with was not designed to affect his decision making so that the prospect of this vehicle purchase scam succeeding was reduced.*

*I don't think HSBC provided an effective warning to Mr R, or that he ignored an effective warning in relation to this payment. I am persuaded that an effective warning would have had a material effect on preventing this payment.*

*Overall, as I don't think Mr R met his requisite level of care, and also that HSBC could've done more to protect him, I think a 50% split of liability is a fair and reasonable outcome for Mr R's fraud claim under the CRM code.*

*Should HSBC have done more to protect Mr R from financial harm from fraud?*

*Outside of the CRM Code, I've thought about whether HSBC ought fairly to have done more to find out more about the payment Mr R was making at the time. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. It would not be possible or reasonable to expect HSBC to check every payment instruction it receives.*

*Having looked at Mr R's statements in the lead up to the scam, I don't consider that a payment of £14,500 was particularly unusual for him. He regularly made payments of this size, and often larger, in most months. I don't think this payment would have appeared out of character for Mr R and I don't think it ought to have stood out to HSBC as being a significant change in the way Mr R's account ran. As such, I don't think HSBC did anything wrong by allowing the payment to go through without contacting Mr R to discuss it.*

*I've also thought what HSBC did when Mr R reported he had been the victim of a scam. From what I have seen, HSBC took reasonable steps to contact the receiving bank to try and recover Mr R's funds when it learnt of what had happened, but no funds remained. This is not surprising, as fraudsters typically act very fast to move funds before the victim realises what has happened.*

*When our Investigator considered the complaint, she recommended that HSBC should pay 8% simple interest from the date the bank declined Mr R's claim under the CRM Code to the date of settlement. But having looked at Mr R's bank statements, I can see he moved the money over to make this payment from another one of his HSBC accounts. I think it's more likely than not that the money would have remained in this account but for the scam. As such, I think the appropriate rate of interest to pay Mr R to compensate him for being deprived access to these funds is the underlying savings account interest rate.*

*I am sorry to have to disappoint Mr R. I know this is not the answer he was hoping for. But I can't fairly hold HSBC responsible for the actions of a fraudster. I can only look at HSBC's position on Mr R's fraud claim and its assessment under the CRM Code. For the reasons I have explained, I'm currently satisfied the bank has been able to establish it can choose not to fully refund Mr R under the CRM Code.*

*Whilst HSBC did not provide an effective warning, I don't think the bank is being unreasonable by saying that Mr R should have done more than he did to protect himself. I'm also satisfied HSBC acted correctly when it processed the payment and that it did all it could to help Mr R once it knew what had happened. As I think both parties ought to have done more here, I can't fairly say that HSBC should have to refund all of the money that's been lost.*

*I recommended that HSBC should refund 50% of the money Mr R lost to the scam along with interest at the originating savings account interest rate from the date the bank declined Mr R's claim under the CRM Code to the date of settlement. HSBC confirmed it had received my provisional decision and agreed it would settle the complaint on this basis.*

*Mr R received the provisional decision but took a different view on some points. He asked me to consider his position before the case was concluded.*

He felt he'd had a reasonable basis of belief to buy the car and didn't agree that he'd been acutely aware of some things that didn't add up otherwise he wouldn't have sent the money. He explained he'd contacted HSBC straight away as soon as he'd been told the car had been involved in an accident and did not wait 72 hours. He explained HSBC told him that some money remained, but not the amount he had transferred.

Mr R suggested in addition to having a reasonable basis for belief he was purchasing the car, his personal circumstances made him vulnerable to being scammed. He explained that he'd been excited to buy his first car as this was something he'd never done before. He outlined the scale of the illegal operation such as the rigour and professionalism of the website and the personnel. He said the documentation he received such as contracts, car report and copy passports gave him a false sense of security and that how he perceived these factors are circumstantial to him personally, based on his previous experience in life. He said that all these factors culminated together in the same few days.

Mr R explained that he'd had sleepless nights thinking about how he'd been tricked. He said *"my picture of him in my mind was a sweet old man hopeful to get rid of his car, a person I respected because of the picture the scammer had built up and my mind presented me with."* Mr R said he didn't want to upset a man who had been messed around before and was mindful that all of the research he'd done would have been wasted if he lost the deal. He said he was vulnerable to the timing and nature of the scam itself, leading to him falling for the trap.

Mr R added that £7,250 is a lot of money to both lose and to get back, especially at a time when he was attempting to launch a new business. He said the 8% interest payment was not necessary and he would be pleased to simply receive the lost amount returned.

As both parties have received and considered my provisional decision, I have now reviewed the matter afresh.

### **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.

I've thought very carefully about everything Mr R has said and described about how this experience has been for him. Mr R spoke candidly about how the aftermath of this scam has impacted him. It's clear he was unsettled by the experience. Scammers are incredibly clever at manipulating their victims and creating a disarming connection. Anyone can fall victim to a scam and it's hard for consumers to stay one step ahead, especially when fraudsters take on all kinds of personas and appearances that have been deliberately designed to lull victims into a false sense of security.

Against this backdrop, I've considered afresh whether Mr R met the CRM Code definition of vulnerable at the time he made the payment. This is an important question because the CRM Code says Mr R would receive a full refund of the amount he lost if he was vulnerable as set out in the CRM Code. Whilst I have a lot of sympathy for what Mr R has said and described, I don't consider he was vulnerable as set out in the CRM Code.

The CRM Code says that someone is vulnerable if *"it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered."*

It's clear that Mr R had no idea that this type of vehicle purchase scam existed before he fell victim to it. But I don't think that, in and of itself, is enough to say that he was in a vulnerable

situation. I've thought about what Mr R has described about his life experiences to date. I've also taken into account the complexity and sophistication of this scam. But I don't think I can fairly and reasonably conclude that Mr R was unable to protect himself from this type of scam. Whilst I do accept vulnerability is dynamic, and that this scam has had a lasting impact on Mr R, I've not seen anything to suggest that he was, for example, lacking in the knowledge, skill and capability to engage in financial services. I don't doubt that Mr R has been impacted by these events, but not to the extent that he lacked the ability to protect himself and make an informed purchasing decision. As I don't think Mr R's situation meets the definition of vulnerable under the CRM Code, I don't think HSBC should refund the full loss for this reason.

In my provisional decision, I explained the reasons why I was not persuaded Mr R had a reasonable basis for believing the transaction was legitimate, notwithstanding the checks that he did do. I thought the advertised sale price was low when compared to the industry vehicle valuation guides for a car of this specification. I noted the escrow account was held in a different name and that there were discrepancies on the Companies House record that Mr R checked which were effectively hiding in plain sight. I thought Mr R had taken a lot on trust and that he'd been too reassured by what the logistics company and seller had told him. In addition, I thought that what Mr R had said about the purchase being on the border of being feasible and his mind convincing himself this situation was legitimate because of other positive experiences on the marketplace was indicative of some doubt.

Even after considering the matter afresh and reflecting on what Mr R has said about being reasonable and responsible in other areas of his life, I still think the concerns HSBC has raised are enough to support its position that it doesn't think Mr R had a reasonable basis for believing the money he sent was for a genuine sale.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mr R from proceeding. But when considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mr R ought reasonably to have taken further steps to protect himself. Buying a vehicle, unseen, at a considerable discount was always a risk. I think Mr R should have done more than he did to question the deal and to satisfy himself that it was legitimate before making the payment.

HSBC had a responsibility to protect Mr R from this type of fraud and the bank has now accepted that it should have done more at the time the payment was made. But as I don't think Mr R had a reasonable basis for believing the situation was legitimate, I think he should share responsibility for the loss, and HSBC is now acting fairly by agreeing to refund him 50% of it.

For completeness, I have investigated whether HSBC could have recovered any of the money Mr R sent, especially as it told him partial funds remained. Whilst funds did remain in the receiving account at the time it was frozen, sadly none of those funds were from the money that Mr R had sent. His money had already been moved on. This means there are no funds belonging to Mr R that could be recovered.

I am sorry this has happened to Mr R. It's not easy to lose money to fraud and I have a great deal of sympathy for him. But in the circumstances, I think a 50% split of liability is a fair and reasonable outcome for Mr R's fraud claim under the CRM code and that HSBC shouldn't be held further liable for the remainder of Mr R's losses.

### **My final decision**

My final decision is that I uphold this complaint and direct HSBC UK Bank Plc to pay Mr R:

- 50% of the money Mr R lost as a result of this scam- £7,250
- HSBC UK Bank Plc should pay interest on this amount at the originating savings account interest rate from the date it declined his claim under the CRM Code to the date of settlement

If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 May 2023.

Claire Marsh  
**Ombudsman**