

Complaint

Mr and Mrs B are unhappy that HSBC UK Bank Plc (trading as first direct) haven't refunded them after Mr B fell victim to a scam.

Background

In August 2022, Mr B wanted to buy a van. He found an advert online for a used van that was available at a good price, given its year of manufacture, model and mileage. He contacted the seller to ask if it was still available.

The seller said that there was significant interest in the van but that he could secure it by paying an upfront deposit. Mr B used a third-party website to conduct several checks to satisfy himself that the vehicle wasn't subject to finance, wasn't stolen and so on. These suggested there were no obvious concerns regarding the vehicle so Mr B paid the deposit of £1,950 using his HSBC account. Unfortunately, when he wanted to arrange to collect the van it was no longer possible to contact the seller. He realised that he'd fallen victim to a scam and so he contacted HSBC.

It considered his complaint under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code and didn't agree to reimburse him. It thought he hadn't taken reasonable care in the circumstances. It thought he shouldn't, for example, have transferred any money before seeing the van in person. They also considered that the price the van was being offered for sale was too good to be true.

Mr B wasn't happy with the response he received from HSBC and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator agreed with HSBC's argument that Mr B ought to have been more cautious, particularly given the price that the van was available for. He thought it was fair and reasonable for it to rely on one of the exceptions to reimbursement in the Code.

Mr B disagreed with the Investigator's opinion. He also added that he didn't think HSBC had done enough to recover his funds from the fraudster. It had contacted the receiving bank in an attempt to recover his funds but nothing was left in the account – but he argues that it could and should have gone further than this.

As Mr B disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting position here is that Mr B authorised the payment. Under the relevant regulations, he is therefore considered liable for it at first instance. However, that isn't the end of the story. HSBC had a range of other obligations in respect of fraud prevention. Broadly summarised, HSBC was also expected to:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among 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 make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

HSBC is also a signatory to the CRM Code. That Code starts with the assumption that, where a customer is a victim of an authorised push payment (APP) scam like this one, the firm should refund their losses, unless a relevant exception applies. It is for HSBC to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

The relevant exception here is where *“the customer made the payment without 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.”*

I've considered this point carefully and I agree with HSBC that Mr B made this payment without a reasonable basis for believing it was in connection with a genuine sale. Although I can see that Mr B carried out some important checks using the vehicle's registration number, I do think the price at which it was listed was an indication that it might not be a legitimate sale. From what I've seen, there wasn't any particular reason given as to why it was being offered a such a low price.

In the circumstances, I think Mr B ought to have proceeded only with caution. Unfortunately, I don't think he did so. He paid the deposit for the van before he'd had the chance to see it. This was despite the fact that the warning displayed when he made the payment advised him that *“if you're paying for a high value item like a car, make sure you see it before making a payment.”* I recognise that Mr B only did so because the scammer created a false sense of urgency by telling him there were other interested parties. But for the reasons I've explained, I think he acted hastily here and so I agree with HSBC that it's fair for it to rely on this exception to reimbursement.

I also thought about whether HSBC's account monitoring ought to have flagged up this payment as one where there was an increased risk of fraud. In such circumstances, it would be expected to take steps to protect its customer – either by displaying a warning or pausing a payment until it's had the opportunity to speak to the customer.

We now know with the benefit of hindsight that Mr B was in contact with a fraudster. However, the question I must consider is whether that risk ought to have been clear to HSBC given what it knew at the time.

Unfortunately, I'm not persuaded that it would've had any reasonable basis for suspecting that this payment had a fraud risk associated with it. I've looked at the statements for Mr and Mrs B's account and I can see that there are a number of larger legitimate transfers in the months prior to the scam. This payment simply wouldn't have stood out as being a cause for concern.

Recovery of funds

HSBC is also expected to take reasonable and prompt action to aid in the recovery of funds where one of its customers falls victim to a scam. I can see that it contacted the receiving bank (the bank that operated the scammer's account) swiftly. Unfortunately, by the time that notification was sent the funds had already been moved out of that account.

Mr B has said that HSBC ought to do more than merely send a notification to the receiving bank and that it should be actively cooperating with the police to recover his money. I understand his strength of feeling on this, but the actions HSBC took meant it complied with its obligations. From the cases we've seen, if the funds aren't stopped while in the receiving account, the likelihood is that they will quickly become untraceable, split amongst multiple accounts and mixed with other fraudulently acquired funds and eventually exit the banking system altogether. HSBC does have obligations to cooperate with active police investigations but those won't necessarily involve the successful recovery of individual losses. There are additional obligations that apply to the receiving bank, but those will be looked into as part of the separate complaint Mr B has raised against it.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 30 June 2023.

James Kimmitt
Ombudsman