

## The complaint

Mrs M complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of a scam.

## What happened

In around June 2018, Mrs M's daughter told her that she was experiencing financial difficulties. Mrs M then arranged to release some equity from her home in order to help with her daughter's situation, and made a number of payments to her – totalling over £40,000.

Following this, Mrs M's daughter said that the money Mrs M had sent her had caused further problems. These included her and her partner's bank accounts being blocked and her IVA being affected. She said she was now involved in a legal case to get their accounts unblocked, and a friend of hers who was a barrister was helping them with it. Mrs M then made a number of further payments to her daughter over the following 18 months to help with these problems – totalling over £150,000. I've set out the payments Mrs M made to her daughter on the attached spreadsheet.

Unfortunately, we now know Mrs M's daughter was lying to her about the problems she was experiencing and the reasons for needing money from Mrs M.

That Mrs M's daughter had been lying was discovered in early 2020 when Mrs M's friends and family became suspicious and spoke to the daughter's employer, who confirmed she had been coming in to work and was not in hospital for treatment – as the daughter had been claiming. Mrs M's daughter has since admitted to Mrs M's friends and family that she was lying about her circumstances. And Mrs M then reported the situation to HSBC and asked that it refund the money she had lost.

HSBC investigated but said it had followed the correct policies and procedures when making the payments, and that Mrs M had instructed it to make the payments. So it didn't agree to refund the money Mrs M had lost. Mrs M wasn't satisfied with HSBC's response, so referred a complaint to our service.

I sent Mrs M and HSBC a provisional decision on 10 March 2023, setting out why I was intending to uphold this complaint in part. An extract from my provisional decision is set out below:

*"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, in all but a limited number of circumstances. But it only applies to payments made after the code came into effect on 28 May 2019.*

*So I will consider the payments Mrs M made before the code came into effect, separately from the payments she made afterwards.*

#### *Payments made before 28 May 2019*

*These payments were made before the CRM code came into effect. And Mrs M accepts she made these payments herself, either in branch, over the phone or via online banking. So while I recognise she was misled by her daughter about the reasons for the payments, she did authorise these payments. And so, under the Payment Service Regulations, the starting position is that she is liable for the payments and HSBC doesn't have to refund them.*

*However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think HSBC should fairly and reasonably:*

- 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 made 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.*

*So I've also considered whether HSBC should have identified that Ms M was potentially at risk of fraud as a result of these payments, or otherwise done more to protect her.*

*From looking at the statements for Ms M's accounts, the first payment she makes to her daughter after her daughter started lying to her about her circumstances was for £10,000. This is a significant amount, and was significantly larger than any other payments made out of the account in the previous six months. It was also made soon after a significant credit into the account. So I think HSBC should have identified that Ms M was potentially at risk of fraud as a result of this first payment, and so carried out additional checks before allowing it to go through.*

*It's not for our service to dictate the checks banks should do or the questions they should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then appropriate follow-up questions.*

*But if HSBC had asked these kind of questions of Ms M when she was making this payment, I think she would have said she was sending money to her daughter to help with her financial situation. And this is a plausible and legitimate reason for sending a large amount of money, so I don't think it would have caused HSBC significant concern. And even if HSBC had asked further questions designed to uncover common scams, such as whether Ms M had spoken to her daughter in person or how she had been given her daughter's bank*

account details, Ms M had spoken to her daughter in person and had sent money to these bank account details before.

So I don't think any questions HSBC could reasonably have been expected to ask would have uncovered any significant concerns or prevented Ms M making the payment.

Ms M has suggested that HSBC could have stepped in at other times as well, including when she visited an HSBC branch to cash in some investments in February 2019. And while I agree HSBC could have been expected to step in at various other times over the following months due to the amount of money Ms M had been sending her daughter, I don't think interventions at any point over this time would have uncovered significant concern either. If asked, I think Ms M would still have told HSBC that she was sending money to her daughter to help with her financial situation. And even if HSBC had been given more detail about what Ms M had been told about her daughter's situation, such as needing help with an IVA or a court case, I think this information would have sounded plausible and legitimate too. So I still don't think HSBC could have been expected to uncover any significant concerns.

I sympathise with the position Ms M has found herself in. She has been the victim of a cruel deception and I appreciate how she feels about this case and that my decision in relation to these payments will come as a disappointment to her. But I don't think anything HSBC could reasonably have been expected to do would have prevented her from making these payments. And so I don't think it would be fair to require it to refund them.

#### *Payments made after 28 May 2019*

*These payments were made after the CRM code came into effect.*

*The CRM code applies to payments made as a result of an APP scam, which it defines as where:*

*“(i) The customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

*In this case, Mrs M transferred funds to her daughter for what she had been told and believed were legitimate financial and legal issues. But her daughter had been lying to her about her circumstances, in order to get her to send the money. So I think the purposes Ms M had been given for the payments were fraudulent. And so I think the payments Ms M made fall under the definition of a scam from the CRM code, and so the payments she made after 28 May 2019 are covered by the code.*

*As I explained above, the CRM code requires firms to reimburse customers who have been the victim of authorised push payment scams 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.*

*HSBC hasn't suggested that Ms M ignored an effective warning in relation to any of these payments. And I haven't seen any evidence that she was shown an effective warning when making any of these payments. So I don't think HSBC has established that this exception to reimbursement applies.*

*I also don't think HSBC has established that Ms M didn't have a reasonable basis for belief when making the payments. Ms M was making the payments to her daughter, who she obviously knew personally and had an existing relationship with. She was speaking to her daughter and seeing her in person, so there was no risk of impersonation. And her daughter was giving her plausible explanations for needing money and reasonable detail on her circumstances. This is also a relationship where people wouldn't be expecting to be scammed or misled, and Ms M's daughter played on their existing parent and child relationship and Ms M's understandable want to help her child when they were in need. So I think Ms M did have a reasonable basis for belief when making these payments.*

*And so I don't think HSBC has established that any of the exceptions to reimbursement under the CRM code apply. So it should refund the payments Ms M made that are covered by the code, in full."*

I said I'd consider anything further Mrs M and HSBC sent in following the provisional decision, provided it was received by the deadline given.

### **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.

HSBC hasn't sent in anything further to be considered following the provisional decision.

Mrs M replied to the provisional decision via her representative and argued that, if HSBC had stepped in and asked questions about the purpose of the payments when she visited the branch with her daughter in February 2019, the scam would have been uncovered. Her representative said that, if asked, Mrs M would have said the money was needed as her daughter's account had been frozen as a result of her IVA and she needed to pay money in to unblock the account. And the representative said that, if told this story, the HSBC branch staff wouldn't have found it plausible and the scam would have been uncovered.

I appreciate that it's not possible to know for certain what would have been said if Mrs M had been asked about this, but I must make a decision based on what I think is most likely to have happened. And if HSBC had asked the types of questions I think it should have done, I think it's unlikely Mrs M would have given such a detailed account of her daughter's circumstances. As I said in my provisional decision, I think Ms M would have told HSBC that she was sending money to her daughter to help with her financial situation. Even if HSBC had been given more detail about what Ms M had been told about her daughter's situation, such as needing help with an IVA or a court case, I think this information would have sounded plausible and legitimate. And, particularly as Mrs M's daughter was also present in branch at this time, I think it's unlikely that HSBC would have had any concerns or that the scam would have been uncovered.

Mrs M has also argued that she shouldn't have to show that the scam would have been uncovered, and that it should be enough to show that HSBC made no effort to detect anything untoward. But while I agree HSBC didn't do what I'd expect and should have carried out additional checks before allowing some of the payments Mrs M made to go

through, I must also consider what difference it would have made if HSBC had done what I'd expect. And, for the reasons I've set out above, I don't think any questions HSBC could reasonably have been expected to ask would have uncovered any significant concerns or prevented Ms M making the payments. So I still don't think it would be fair to require HSBC to refund any of the payments made before 28 May 2019.

As I set out in my provisional decision, I did think HSBC should refund the payments Mrs M made to her daughter after 28 May 2019. And neither Mrs M nor HSBC has sent in any evidence or arguments about these payments. So I still think the conclusions I reached here are correct, and for the same reasons.

### **My final decision**

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

- Refund Ms M the payments she made from 28 May 2019 onwards, minus the payments her daughter made back to her during that time, as set out on the attached spreadsheet – for a total of £24,868
- Pay 8% simple interest on the refund of the payments from her current account, from the date it initially responded to her claim until the date of settlement
- Pay the account interest rate on the refund of the payments from her cash ISA, from the date it initially responded to her claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 June 2023.

Alan Millward  
**Ombudsman**