

The complaint

Mr and Mrs C complain that HSBC UK Bank Plc won't refund the money they lost when they were the victims of a scam.

What happened

In March 2022, Mr and Mrs C received a phone call from someone claiming to work in HSBC's fraud department. The caller spoke to Mr C and said they were concerned their account had been compromised and explained they needed to move their money to a secure account to keep it safe. As Mr C believed he was speaking to HSBC, he followed the instructions the caller gave him and made a number of payments out of his HSBC accounts to the account details the caller gave him - including £24,000 out of his and Mrs C's joint account. Unfortunately, we now know the caller was a scammer.

After the payment were made, Mr and Mrs C became suspicious of what had happened and so called HSBC, who confirmed it was a scam. HSBC then investigated and said it felt it had sufficient fraud prevention measures in place, but that Mr and Mrs C could have done more checks before making the payment. So it didn't agree to refund the money Mr and Mrs C had lost. Mr and Mrs C weren'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 it gave Mr and Mrs C an effective warning before the payment was made, or that Mr and Mrs C had made the payment without a reasonable basis for belief that it was genuine. So they thought HSBC should refund the money Mr and Mrs C had lost as a result of the scam. HSBC disagreed, 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.

Mr C made payments out of a number of accounts as a result of the scam, but this complaint is only dealing with the payment made out of Mr and Mrs C's joint account with HSBC.

In deciding what's fair and reasonable in 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 and Mrs C 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 and Mrs C 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 screenshots of the warning Mr and Mrs C were shown before making the payment. And this does say not to proceed if you are being asked to move money for safekeeping purposes, as Mr and Mrs C were. And it says that if someone has told you to mislead HSBC about the reason or the payment, as it appears the scammer did here, then it is a scam.

But the warning is mostly talking about romance or friendship scams over social media, so I don't think it will have seemed relevant to what was happening to Mr and Mrs C. It doesn't go into any detail about what a safe account scam like the one they were falling victim to would look or feel like. And the information about safekeeping is some way down the warning, after the information about social media impersonation or romance scams which wasn't relevant to Mr and Mrs C. So I don't think this warning was specific enough to be effective in Mr and Mrs C's circumstances.

And so I don't think HSBC has established that Mr and Mrs C ignored an effective warning in relation to the payment.

HSBC has argued that Mr and Mrs C selected 'paying friends and family' when asked what the purpose of the payment was, and so mislead it about the true purpose of the payment and prevented it from showing a more effective warning. But the test under this part of the CRM code is just whether Mr and Mrs C ignored an effective warning. And, regardless of why they were shown this particular warning, I don't think the warning they were shown was effective in their circumstances. So I still don't think HSBC has established that Mr and Mrs C ignored an effective warning.

Did Mr and Mrs C have a reasonable basis for belief when making the payment?

HSBC has said there were a number of things about what Mr and Mrs C were told and asked to do that should have caused them significant concern. So it doesn't think they had a reasonable basis for belief when making the payment.

But when the scammer first called, Mr C says they verified his identity in the same way HSBC usually does by confirming his name, date of birth, first line of address, post code and last transaction on the account. He's also said the scammer knew details of the accounts he held with HSBC. And from what he's said about this, I think it's reasonable that this will have made the call seem genuine.

Mr and Mrs C have also said the scammer knew that they had received a text message earlier in the day asking them to pay for a covid test. The scammer then explained that this would have been a scam and was likely how their account was compromised. And while the text message was likely sent by the same scammer, I think them using it in this way and basing their explanation of what was happening around it would have linked what they were saying to actual events, made it seem like they knew what they were talking about and made it seem like they were trying to help. So I think it's reasonable that this will have made what the scammer was saying seem believable and reassured Mr and Mrs C that the call was genuine.

The scammer asked Mr and Mrs C to send the payment to an account which they said was for an account manager. So while they were asked to send money to an account that wasn't in either of their names, they were given a seemingly plausible explanation for this. And while they were also asked to move money from several accounts, through different accounts and then on to the external accounts, Mr and Mrs C have said the scammer coached them through the whole process. And as I think the first part of the call was relatively convincing and Mr and Mrs C were then understandably stressed about the possibility of losing their money, I don't think it's unreasonable that they then followed the instructions of someone they thought was a bank employee.

HSBC has also highlighted the warning Mr and Mrs C were shown and said it wasn't reasonable for them to continue to make the payment after seeing it. But, as I explained above, I think most of this warning wasn't relevant to Mr and Mrs C's circumstances. It says it is a scam if someone has told you to mislead HSBC, but then mostly talks about romance or friendship scams over social media which isn't what was happening with Mr and Mrs C. And it only briefly mentions moving money for safekeeping later in the warning, after this. So I don't think it's unreasonable that Mr and Mrs C didn't think this warning was relevant to them and continued to make the payment after seeing it.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what they were told that should have caused Mr and Mrs C some concern. But based on what I've seen, I don't think it's unreasonable that, in the moment, Mr and Mrs C either didn't pick up on these things or weren't caused enough concern to overcome the parts of the scam that felt genuine.

So I don't think HSBC has established that Mr and Mrs C 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 money Mr and Mrs C lost as a result of this scam.

I also think this payment was large and unusual enough that HSBC should have identified Mr and Mrs C were potentially at risk of fraud as a result of it, and so intervened to carry out additional checks before allowing it to go through. And that, if it had done so, the scam would likely have been uncovered and the loss prevented at that point. So I think HSBC should pay interest on the amount Mr and Mrs C lost from the date of the payment, until the date of settlement.

My final decision

I uphold this complaint and require HSBC UK Bank Plc to:

- Refund Mr and Mrs C the £24,000 they lost as a result of this scam
- Pay 8% simple interest on this refund, from the date of the payment until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 14 September 2023.

Alan Millward
Ombudsman