

The complaint

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

What happened

Mr and Mrs L were having some building work done at their property. The builder they were using had been working there for a number of months and Mr and Mrs L had made a previous payment to them for some of the earlier work. But shortly before the final payment was due, Mr and Mrs L received an email which appeared to be from the builder and asked them to make the final payment to different account details.

As they thought the email was genuine and came from the builder, Mr and Mrs L made the payment of £13,000 from their HSBC account to the new account details. But, unfortunately, we now know the email came from a scammer.

The scam was uncovered when the actual builder told Mr and Mrs L they hadn't received the final payment. Mr and Mrs L then reported the payment they had made to the scammer to HSBC and asked it to refund the money they had lost.

HSBC investigated but said it had sufficient fraud warnings in place, and that Mr and Mrs L could have carried out further checks before making the payment. So it didn't agree to refund the money they had lost. Mr and Mrs L weren't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought it was reasonable that Mr and Mrs L believed the payment was genuine, and they didn't think the warning HSBC had shown them was effective. So they thought HSBC should refund the money Mr and Mrs L had lost, in full. HSBC disagreed 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 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 L 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 L 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 it says Mr and Mrs L were shown before making the payment, which said:

"Fraudsters may pretend to be a genuine business by impersonating them, often using branded emails and invoices. They may ask you to change existing the detail of a payment you're expecting to make, or a one-off new payment."

What you need to do before making the payment:

- *Check where you're sending the money or why payment details may have changed by contacting the person or company using a phone number you've checked is genuine*
- *If you're contacted my email check its content and address, does it have any grammatical errors or unusual changes in font or format? Was it sent from the company you expected? Is the sender's email address different, even by just one character?"*

While this warning does mention that fraudsters may change the details of a payment a customer is expecting to make, I don't think it's clear enough about what this kind of scam could look or feel like. The advice it gives for if a customer is contacted by email – as Mr and Mrs L were, wouldn't have uncovered the scam in these circumstances as the email address appeared to be the same and there weren't any grammatical errors or significant changes in font or format. And I don't think the warning did enough to highlight the seriousness of the consequences of continuing to make the payment if the email was from a scammer.

So I don't think the warning HSBC says Mr and Mrs L were shown was clear or impactful enough to be effective in their circumstances. And so I don't think HSBC has established that Mr and Mrs L ignored an effective warning in relation to the payment they made.

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

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

But Mr and Mrs L had been having work done by the builder for some time and were expecting to make the final payment around this time. So I think it's reasonable that the request for the payment didn't seem unusual or suspicious to them.

The emails Mr and Mrs L received from the scammer appeared to come from the same email address they had received genuine emails from the builder from, and followed on in the same thread as genuine emails they had received from the builder. The font and formatting of the scam emails was the same as the genuine emails, and they had the same email signature of the director of the building company at the end of them. And so I think it's reasonable that these emails will have seemed genuine to Mr and Mrs L, and that they thought they had come from the genuine builder.

Mr and Mrs L also received two emails from the scammer – the first asking them to hold the final payment and saying new bank details would be sent later, and the second sending the new bank details. So it wasn't just one email which changed the details for the payment, and I think this will have helped make what was happening feel genuine.

HSBC has argued that Mr and Mrs L were asked to pay a company with a different name than the builder they had been dealing with, and that this should have caused them concern. But the scam emails they received gave them what I think was a plausible explanation for why they had to pay a different company. So I think it's reasonable this didn't cause them significant concern.

HSBC has also said the emails from the scammer had a different tone to the emails Mr and Mrs L had received from the genuine builder, and were more formal. But Mr and Mrs L have said they thought the change in tone of the emails was due to the urgency of needing to change the bank details and the final payment needing to be paid, which I think is a reasonable assumption to have made.

The warning HSBC says Mr and Mrs L were shown did mention this kind of scam but, as I explained above, I don't think this warning was clear or impactful enough to be effective in these circumstances. And Mr and Mrs L thought it was sent from the company they expected, there weren't any grammatical errors or changes in format and it wasn't from a different email address. So I think it's reasonable for Mr and Mrs L to think they had satisfied the risks the warning mentioned and I think it was reasonable for them to continue to make the payment, even after seeing this warning.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what happened that could have caused Mr and Mrs L some concern. But based on what I've seen, I don't think it's unreasonable that, in the moment, Mr and Mrs L 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 L 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 L lost as a result of this scam.

My final decision

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

- Refund Mr and Mrs L the £13,000 they lost as a result of this scam
- Pay 8% simple interest on this refund, from the date it initially responded to their claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 15 December 2023.

Alan Millward
Ombudsman