

The complaint

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

What happened

In December 2021, Mr H received a text message from a number he'd never been contacted by before. It appeared to be wrong number and intended for someone else, but the person sending the messages then started a conversation with Mr H. And this conversation continued over the next few days and weeks, to the point where Mr H thought he and the person sending the messages were friends.

The person sending the messages told Mr H that they had been able to make a lot of money trading foreign currency, and that their aunt had helped them learn how to do it. They suggested Mr H could learn how to trade too, showed him how to download the trading platform they used and introduced him to her aunt and an analyst and account manager they said worked for her.

Mr H and Ms I then made a number of payments from their joint account with HSBC to the account details the account manager gave Mr H, in order to add money to the trading platform and make trades as the analyst recommended. Mr H was given log-in details for an account with the trading platform, which showed him making a significant profit on the trades he was making. So Mr H and Ms I continued making payments to the account details they were given. I've set out the payments Mr H and Ms I made below:

Date	Details	Amount
8 January 2022	To individual 1	£5,000
12 January 2022	To individual 2	£10,000
13 January 2022	To individual 3	£17,000
17 January 2022	To individual 3	£18,000
20 January 2022	To individual 4	£28,000
27 January 2022	To company 1	£10,000
27 January 2022	To company 1	£10,000
27 January 2022	To company 1	£4,000
11 February 2022	To individual 5	£50,000
14 February 2022	To individual 5	£50,000
15 February 2022	To individual 5	£50,000
4 March 2022	To company 1	£25,000
8 March 2022	To company 1	£24,890
9 March 2022	To company 1	£24,900
14 March 2022	To company 1	£24,500

Unfortunately we now know the person sending the messages, the aunt, the account manager and the analyst were all scammers.

The scam was uncovered after Mr H received a message saying the trading account had been frozen as there were concerns about the source of the money that had been paid in. He was told he had to pay in 25% of the balance in the trading account in order to un-freeze it. But Mr H didn't think this sounded right, so reported the payments to HSBC as fraud.

HSBC investigated but said it had provided sufficient warnings and guidance before Mr H and Ms I made the payments. It also said it thought Mr H and Ms I could have done more to prevent the scam, such as checking who they were speaking to and paying. And it said it had been unable to recover the money from the banks it was sent to. So it didn't agree to refund the money Mr H and Ms I had lost. Mr H and Ms I 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 Ms H and Ms I had a reasonable basis for belief when making the payments. But they also didn't think the warnings HSBC had provided were effective or that HSBC had done enough to protect their account. So they thought HSBC should refund 50% of the money Mr H and Ms I lost, and pay £200 compensation. HSBC didn't agree 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.

Are the payments covered by the CRM code?

I've first considered whether the CRM code applies to all the payments Mr H and Ms I made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code HSBC has signed up to. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. But it doesn't cover international payments.

In this case, the payments Mr H and Ms I made between 13 – 20 January 2022, and then between 11 – 15 February 2022 were international payments. And so I don't think these payments are covered by the CRM code. I've highlighted these payments in bold in the table above.

The rest of the payments Mr H and Ms I made were to UK accounts. And they meet the other requirements needed to be covered by the CRM code. So I think these payments are covered by the CRM code.

The payments covered by the CRM code

The CRM code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr H and Ms I 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 H and Ms I have a reasonable basis for belief when making the payments?

HSBC has argued that Mr H and Ms I didn't act reasonably and should have done more to check who they were speaking to and paying. And I appreciate that this was a sophisticated scam, where Mr H and Ms I were manipulated through social media before making the payments, and were given log-in details to a trading platform which showed the trades and profit they were making. But there were also a number of things about what was happening and what they were told that I think should have caused them significant concern.

The first contact Mr H received was a text message from a number he'd never been contacted by before, and that appeared to be a wrong number and intended for someone else. So I think it should have caused him significant concern when the person who sent the message then started a conversation with him, and particularly when they then asked for personal details about him and encouraged him to invest and trade in an area he had no experience or expertise in.

Mr H and Ms I make the first payment of £5,000 two weeks after that first message. But the person Mr H was speaking to doesn't appear to have offered any evidence of who they were or that they had experience of the trading they were suggesting Mr H get involved in. And Mr H doesn't appear to have taken any steps to confirm the identity or employment of the person he was speaking to, their aunt, the account manager or the analyst. And I think it would be reasonable to expect some checks into these things before sending such a large payment.

Mr H and Ms I were also told they had to send payments to an intermediary company, because the trading platform didn't have a bank account. And they were then told to make the first payment to the personal account of an individual they didn't know and hadn't spoken to. But they don't appear to have been given any information showing who this individual was or how they were connected to the intermediary company they were supposed to be paying. So I think this explanation of how they should make payments should have caused them concern.

Mr H and Ms I also don't appear to have been sent any paperwork or documentation relating to the investment or trading they were doing, which I would expect when such large amounts are involved. And Mr H was told the person who initially messaged him had put \$250,000 into his trading account to help him get started. But I think this should have been highly suspicious, as they had only been speaking for two weeks and had never met in person.

So I think HSBC has established that Mr H and Ms I made the first payment without a reasonable basis for belief that it was genuine. And I think the circumstances for the later payments only became more suspicious, as Mr H and Ms I were asked to pay more individuals they didn't know and Mr H was told he was making profits that I think were too good to be true. So I don't think Mr H and Ms I had a reasonable basis for belief when making any of the payments, and so HSBC doesn't have to refund all of the money they lost as a result of these payments.

Did HSBC meet its requirements under the CRM code?

Even though I don't think they had a reasonable basis for belief when making the payments, Mr H and Ms I may still be entitled to a refund of some of the money they lost if HSBC didn't

meet its requirements under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

The first payment Mr H and Ms I made as a result of this scam was for £5,000, which I consider to be a significant amount of money. And it was made to a new payee they hadn't sent money to before. So I think HSBC should have identified a scam risk here, and so provided Mr H and Ms I with an effective warning.

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 H and Ms I were shown before making the first payment of £5,000, as well as before a number of the other payments they made, which said:

"This could be a scam

Fraudsters can offer you what appears to be a genuine opportunity with high returns. They can pressure you to invest your savings or transfer your current pension to a new scheme.

- *Take time to talk to someone you trust who is not involved with the investment*
- *You must independently research who you're sending money to*
- *Check the company is genuine and authorised by the Financial Conduct Authority...*
- *Company names can be cloned. It's vital you contact the company on an independently verified number*

Visit our Fraud Centre to find out more

By choosing to continue, you agree you've read our warning and are happy to proceed. You accept we may not be able to recover your money if it's been sent to a fraudster's account."

This warning explains that fraudsters can offer investments with high returns and that HSBC may not be able to recover money once it's been sent to a fraudster. It also sets out steps a customer can take to address the risk. So I think it does a good job of alerting customers to potential risks and how to address them.

But the warning mentions transferring a pension and cloned companies, which weren't relevant to Mr H and Ms I's circumstances. Mr H and Ms I had been contacted and manipulated through social media, which this warning doesn't mention at all. And they'd been led to believe they were making trades through a fake trading platform, which the warning also doesn't mention. So I don't think this warning was specific enough to be effective in Mr H and Ms I's circumstances.

And so I don't think HSBC met its requirements under the CRM code to provide effective warnings. And so I think HSBC should refund 50% of the money Mr H and Ms I lost as a result of these payments.

HSBC has argued that it wouldn't have made a difference even if it had provided an effective warning, as it thinks Mr H and Ms I would have continued to make the payments either way

– as they did when later interventions were made. But I don't agree. I think the warning HSBC gave would have been more impactful and more likely to influence Mr H and Ms I if it had been more specifically related to the type of friendship and fake trading scam they had fallen victim to. And as the warning would have been shown before they had made their first payment, I think Mr H and Ms I would have been less invested in the scam at that point and so more likely to be persuaded it wasn't genuine. So I don't agree an effective warning wouldn't have made a difference here.

I therefore think HSBC should refund 50% of the payments Mr H and Ms I made that are covered by the CRM code.

The payments not covered by the CRM code

As I explained above, the six international payments Mr H and Ms I made aren't covered by the CRM code. And Mr H accepts that he made these payments himself. So while I recognise that he didn't intend for the money to go to scammers, he did authorise these payments. And so the starting position is that Mr H and Ms I are liable for them 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 Mr H and Ms I were potentially at risk of fraud as a result of these payments, or otherwise done more to protect them.

Did HSBC do enough to protect Mr H and Ms I?

The first international payment Mr H and Ms I made was for £17,000, which I consider to be a significant amount of money. And it was significantly larger than any other payment made out of Mr H and Ms I's account in the previous months, and was made to a new payee they hadn't sent money to before. So I think HSBC should have identified that Mr H and Ms I were potentially at risk of financial harm as a result of it, and carried out additional checks before allowing it to go through.

HSBC has shown that Mr H and Ms I were shown a warning, like the one shown for the CRM payments above, when they made this payment. But I don't think this was sufficient to address the risk HSBC should have identified, and I think HSBC should have blocked the payment and contacted Mr H and Ms I to carry out additional checks before allowing it to go through.

HSBC did block a later payment Mr H made and called him to ask questions about it. So I've considered whether it did enough in this call and whether it would have made a difference if it had called about the first international payment.

When it spoke to Mr H, HSBC explained that it was concerned because he had said he was sending money to a foreign exchange company but the bank details he had given were for an individual's personal account. It explained this kind of payment matched scam trends and that an investment platform would never ask you to transfer money to a personal account. And so I think HSBC did a reasonable job of explaining its concerns about the payment to Mr H.

But Mr H mentions in the call that he is dealing with an account manager and has been given log-in details for a trading platform, which are both features of well-known scams. He also says that, whenever he wants to add money to his account, his account manager gives him bank details to send money to and that he has sent money to a variety of different details – which I think should have caused HSBC significant concern. And Mr H mentions he has borrowed money from friends to make this investment and doesn't have any documentation for it, which I think should also have caused HSBC concern.

So I think HSBC should have asked more probing questions, based on the information it received from Mr H. And I don't think HSBC asked probing enough questions about where Mr H had found out about the investment opportunity or if he'd been able to make any withdrawals from the trading platform.

If HSBC had asked more probing questions, I think it would have found out that Mr H had been recommended the trading platform by someone he had recently met online but never met in person. And that he hadn't made any withdrawals from the trading platform. And given this information, I think HSBC should have had serious concerns and explained to Mr H that he was likely the victim of a scam.

So if HSBC had carried out additional checks before allowing the payment of £17,000, as I think it should have done, I think the scam would have been uncovered.

HSBC has argued that Mr H and Ms I would have continued to make payments towards the scam in any event, and that there was nothing it could have done to prevent their loss. But, as above, I disagree. If HSBC had found out that Mr H had been recommended the trading platform by someone he had recently met online and had never met in person, it could have explained that this matches trends for investment scams. It could have explained that scammers will often provide log-in details for fake trading platforms which show that victims are making significant profits. It could have explained that the way Mr H had been asked to send money to the investment platform wasn't how a legitimate company would work. And it could have given Mr H a number of checks he could carry out into the people he had been speaking to, such as finding out who the aunt, account manager and analyst worked for and doing more checks into the companies he was paying.

As HSBC is the expert in financial matters in this situation, I think a warning like this would have carried significant weight with Mr H and Ms I. And as the first international payment was only the third payment Mr H and Ms I made towards the scam, I think they would have been less invested in it and less convinced it was real at that point, and so more likely to follow the advice HSBC gave.

So I think it's likely that, if HSBC had carried out additional checks and given more specific advice to Mr H before the £17,000 payment, that Mr H and Ms I wouldn't have made any further payments and so wouldn't have lost the money from the international payments.

Should Mr H and Ms I bear some responsibility for their loss?

I've also thought about whether it would be fair for Mr H and Ms I to bear some responsibility for the loss they suffered. And, for similar reasons to why I don't think they had a reasonable basis for belief when making the payments, I think it would be fair for them to do so. I think there were a number of things about what was happening that should have caused them significant concern, including how Mr H was first contacted, how they were asked to make the payments and the lack of information they were given about who they were speaking to and sending money to.

HSBC has argued that Mr H and Ms I should bear most, if not all, of the responsibility for their loss. But while I appreciate that Mr H and Ms I should bear some responsibility, I also think there were significant failings by HSBC here – as I've explained above. So I don't think it would be fair for Mr H and Ms I to bear sole responsibility for the loss, and I think it would be fair for both sides here to bear equal responsibility.

So I think HSBC should refund 50% of the international payments Mr H and Ms I made as a result of this scam.

Summary

Overall then, I think HSBC should refund 50% of the payments covered by the CRM code, as I don't think Mr H and Ms I had a reasonable basis for belief when making the payments but HSBC also failed to meet its requirement under the code.

And I think HSBC should refund 50% of the payments that aren't covered by the CRM code, as I think it should have done more to protect Mr H and Ms I but that it would be fair for them to bear some responsibility too.

Recovery

We expect businesses to take reasonable steps to help customers recover any money they have lost as a result of a scam. So I've also considered whether HSBC did enough to try to recover the money Mr H and Ms I lost.

But HSBC has sent us evidence that it contacted the banks the payments were sent to within a reasonable amount of time, to ask if the money could be returned. Those banks replied to say there were no funds left to return. And, as all of the payments had been made several weeks before the scam was reported, I think it's unlikely anything HSBC could reasonably have been expected to do would have been able to recover the money Mr H and Ms I lost.

Customer service

Our investigator recommended that HSBC should pay £200 as compensation for its failings surrounding the scam. But while I agree there were failings by HSBC here, I've also explained why I think Mr H and Ms I should bear some responsibility too. And I don't think it was unreasonable for HSBC to make the arguments it did, or that there were significant delays in its response to this claim.

So I don't think it would be fair to require HSBC to pay any compensation here.

My final decision

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

- Refund Mr H and Ms I 50% of the payments they made as a result of this scam, that are covered by the CRM code – for a total of £69,145
- Pay 8% simple interest on this refund, from the date it responded to Mr H and Ms I's claim, until the date of settlement
- Refund Mr H and Ms I 50% of the payments they made as a result of this scam, that are not covered by the CRM code – for a total of £106,500
- Pay 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms I to accept or reject my decision before 8 September 2023.

Alan Millward
Ombudsman