

## **The complaint**

Mrs B complains that HSBC UK Bank Plc hasn't refunded her after she fell victim to a scam.

## **What happened**

The background to this complaint is well-known to all parties and so I won't go into extensive detail here.

Mrs B found a car she liked on eBay, advertised for £4,550. It appeared to be listed by a car dealer (whom I'll refer to as S), rather than a private individual, that was registered with eBay. Mrs B says she checked the details of S online. She could see other cars for sale by S on eBay. And she checked on Companies House and other sites to verify S' details. Mrs B carried out an HPI check on the car to make sure it hadn't been reported stolen and didn't have outstanding finance.

Mrs B discussed the purchase with S and it said there was some damage to the car. S said there were some scratches down one side and this was one of the reasons for a reduced price.

S also told Mrs B it had acquired the car through a part-exchange deal with another vehicle and, because they normally dealt with vans, they wanted a quick sale.

Mrs B decided to go ahead with the purchase and sent a payment of £900 to the details indicated by S. The account payee name was in the format of a sole trader, appearing as an individual's name followed by 'trading as S'.

The scam came to light when Mrs B travelled to collect the car and there was no trace of the dealer. She contacted HSBC to report what had happened.

HSBC investigated and said it wouldn't refund Mrs B. It said it didn't believe she'd carried out sufficient checks to ensure S and the purchase were legitimate. Mrs B didn't agree and so brought her complaint to our service.

One of our investigators considered the complaint and didn't uphold it, finding HSBC's position to be fair and reasonable. Mrs B was unhappy with the outcome and so asked that an ombudsman review the complaint.

## **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.

I'm sorry to disappoint Mrs B but I'm not upholding her complaint. I'll explain why.

A customer is generally responsible for any payments out of their account which have been properly authorised. This is set out in the Payment Service Regulations (2017). And it remains true even where money has been sent under false pretences, as it was here.

HSBC is, however, a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code sets out that the victim of a scam ought to be refunded in most circumstances.

But within the Code are exceptions to reimbursement a firm like HSBC can rely on and choose not to reimburse. HSBC has relied on one such exception which can be set out in the form of a question:

*Did Mrs B have a reasonable basis for believing she was sending the payment to legitimate parties for legitimate purposes?*

It's this question my investigation and findings focus on. And I'm unable to say HSBC has acted unfairly or unreasonably in concluding Mrs B did not have a reasonable basis for belief.

I do appreciate Mrs B did take steps to protect herself. She carried out an HPI check and looked into S' details. But I don't find those checks were proportionate or sufficient in the circumstances. And I believe there were signs that all was not as it appeared.

I've set these findings out for Mrs B already, in informal communications before this decision has been issued. And Mrs B has referred to some of the findings as victim blaming. I can understand why she is upset by the findings and why she feels that way. But the Code is clear that such considerations must be made and that a customer might be held responsible for losses even though they've been the innocent victim of a scam.

I'm satisfied the price of the car ought to have appeared as too good to be true from the outset. Independent valuations of like-for-like models (including mileage) set a fair price at around £9,000. It's then fair and reasonable to say that an offer price at half of that value ought to have been viewed with suspicion.

Mrs B has said there were explanations for the reduced price. But I don't find them to be persuasive enough to explain the dramatic fair value difference. One of the suggestions for the reduced price was that the seller dealt mostly in commercial vehicles and so wanted to be rid of the car with minimal hassle. But I don't believe that represents a realistic position for a professional seller of vehicles to take. Even were a quick sale desired, I believe a legitimate seller would still be looking to maximise their returns.

Mrs B has also said S told her there was some damage to the car. But the damage described would seem negligible and so wouldn't have impacted the price greatly. I also note there was no evidence asked for or provided in respect of the damage, which seems unusual.

Mrs B says she saw the same model of car, with similar mileage, for a similar price. But I've seen no evidence of that.

I've considered what information about S was available at the time Mrs B sent the money to it. I can see it was registered with eBay as a business seller. But it's evident it had no reviews and, it appears, no previous sales. And so there was no background of positive experiences of other buyers to be relied on. That other cars were for sale from the same seller doesn't help to establish it as a trustworthy merchant.

Mrs B has said she also checked the details of S on Companies House. But the business listed there had only been incorporated the month before and there was no visible trading history. There also appears to have been no other trace of the company at the registered address. It doesn't show up in a Google search under the address. There actually seems to be virtually no online footprint for S. And so there seems to have been very little to verify S' legitimacy or existence.

I've also noted the payee name used to make payments. Although Mrs B was searching the details of a limited company, she was given the payee details for a sole trader with a trading as name. I appreciate Mrs B says the account details were confirmed as a match. But it's

clear there was a disparity between the company she was checking online and who she was paying. And the named individual had no apparent connection to the limited company. It's not that this fact on its own – or any of the other individual points – is enough to say Mrs B lacked a reasonable basis for belief. But when all points are considered against the wider circumstances and the other important contextual elements, it does build the picture of something not being right that ought to, fairly and reasonably, have been recognised at the time.

It is also the case that Mrs B was shown a warning when she set up the new payee and made payment. Although I'm not considering one of the other exceptions to reimbursement here – *did the customer ignore an effective warning?* – I do find there is relevance to the reasonable basis for belief exception. The warning stated:

*Fraudsters may advertise products, goods, or services on social media or other online marketplaces. In some cases, they even set up and use legitimate looking websites*

*Stop and think - does this seem right, is the offer for a limited time or feel too good to be true?*

*Do not proceed if you are asked to pay by bank transfer rather than using a more secure way to pay, for example a credit or debit card, which provides more protection against fraud*

*Do not proceed if you are asked to make the payment away from the usual payment platform - you couldn't make a payment through eBay, which would normally be expected with sale carried out on the platform*

*For a high value item, for example a car, make sure you physically see it before making a payment.*

It's clear much of this warning applies directly to the situation Mrs B found herself in. Even if she didn't think the price was too good to be true, there are other elements that ought to have resonated with her. That includes that she was dealing with what was apparently a genuine and established car dealer, but it had no way of taking payment apart from bank transfer. And that sole payment method was expressly warned against by HSBC.

It's for all these combined reasons that my findings are that HSBC has acted fairly and reasonably in declining to refund Mrs B.

I can also see from the evidence that HSBC contacted the bank the money was sent to promptly once it was made aware of the scam. But as the money had already been removed from the recipient account there was nothing to return. So there was nothing more HSBC could do.

### **My final decision**

I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 March 2024.

Ben Murray  
**Ombudsman**