

The complaint

Mr and Mrs T complain that HSBC UK Bank Plc won't refund them the money they lost to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But briefly, both parties accept that in October 2023, Mr and Mrs T sent a faster payment of £3,500 to a new payee, believing they were making a genuine payment for a van deposit. However, unbeknownst to Mr and Mrs T, they had in fact been corresponding with a fraudster who ended all communication with Mr and Mrs T after receiving their money.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code, which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams like this in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case.

HSBC has said that Mr and Mrs T didn't have a reasonable basis for believing they were making a legitimate payment. HSBC also said that Mr and Mrs T ignored an 'effective warning' when making the payment to the fraudster. They've confirmed the warning they presented during the payment process was as follows:

'Caution – This could be a scam

(making a large payment e.g. house or car)

WARNING – if someone has told you to mislead us about the reason for your payment and/or choose the wrong payment type, **stop, this is a scam.**

Fraudsters may advertise on social media, online marketplaces and on websites that seem legitimate but have been set up to carry out fraud. They can also pretend to be a genuine business, access your emails or invoices and ask you to make a payment to a different account or provide you with account details for a new payment.

What you need to do before you make the payment:

- **Stop and think** does this seem right? Is the offer for a limited time or too good to be true?
- **If you're contacted by email** check the 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?
- **Check any changes** like payment details by contacting the person or company using a phone number you've checked is genuine
- **Beware of false websites and reviews** and thoroughly research the seller online using trusted sources before sending any money
- **Don't make the payment** if you're asked to pay by bank transfer rather than using a more secure way e.g. a credit or debit card, which gives you more protection against fraud
- **if you're paying for a high value item** like a car, make sure you physically see it

before making a payment.

Visit our Fraud centre for more information on what you should check before making payments.

IMPORTANT: By choosing to continue, you agree you've read this warning, you're happy to proceed and that we may not be able to recover your payment if it's sent to a fraudster's account. If you have any doubts or concerns at all, please stop immediately.'

HSBC did however recognise that it provided a poor service to Mr and Mrs T when they attempted to contact HSBC to raise a claim, and provided £50 to apologise for this.

Mr and Mrs T remained unhappy and referred their complaint to our service. An investigator considered the complaint and upheld it in part. She didn't think Mr and Mrs T had a reasonable basis for believing the payment they made was legitimate – she considered that Mr and Mrs T should have been wary of the sale from the outset as she thought the price the van was being sold for (£8,500 in total) was too good to be true, based on the actual trade value of the van (around £14,500). However, she also didn't consider the warning HSBC had provided was 'effective' for the particular circumstances of the scam. She therefore considered both parties should share liability, with HSBC refunding Mr and Mrs T 50% of the payment made.

Mr and Mrs T disagreed that the purchase price was 'too good to be true'. They provided evidence that they subsequently bought another similar model van for £9,000. While this van broke down almost immediately after purchase, they argued that this wouldn't have been known to the seller and therefore wouldn't have caused a lower price point. While Mr and Mrs T didn't agree with this point in the view, they accepted the investigator's view overall, based on the evidence the investigator had relied upon to value the vehicle. HSBC disagreed with the investigator's view. It considered the warning it provided was effective for the scam Mr and Mrs T fell victim to and that as Mr and Mrs T had rarely been presented with warning messages in past payments, this should have impacted their decision making in the payment process.

As HSBC disagreed with the investigator's view, the complaint has been referred to me for a final decision.

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've thought carefully about whether I consider Mr and Mrs T had a reasonable basis for believing the payment they made to the fraudster to be genuine. I accept that it's a finely balanced case, particularly as Mr and Mrs T had clearly conducted checks on the van to confirm its condition, as well the seller's apparent location and have since purchased a similar van for a similar price. However, as I've mentioned, having researched the specific van the fraudster had for sale, its typical retail value is around £14,500 on average. That means that by advertising it for £8,500, the seller was asking for less than 60% of the van's expected value. Mr T has acknowledged the van seemed cheap and for this reason had questioned with the fraudster whether it was being sold at auction. The fraudster replied that due to his trade, he was purchasing a smaller vehicle. I don't think the reason the fraudster gave was particularly compelling to be selling the van so cheaply – there was no apparent urgency or issues raised that would suggest why a seller would be willing to take such a loss on the sale price. The deposit requested was also particularly high. As it appears the main

reason for taking a deposit was to secure the van from being sold to others, it seems unusual that such a high proportion of the van's overall value would be requested to do so.

Mr T has said he bought a similar van shortly after the scam for just £500 more. While I accept the vans were similar, the second van Mr and Mrs T purchased did have a slightly lower market value (around £13,400) and, of course, a slightly higher price requested. In addition, while I accept that it's presumed that the seller of this car had no prior knowledge that it was about to break down (based on the issue that the van had being difficult to detect), this still can only be a presumption. In any event, regardless of whether Mr and Mrs T found a subsequent good deal, I don't think this negates from the fact that, for the first sale, based on the apparent good deal being offered, Mr and Mrs T ought to have done more checks, such as seeing the van in person, to assure themselves this was a genuine purchase, before agreeing to send a payment. I therefore think there were elements of the scam that ought to have caused concern to Mr and Mrs T and that they reasonably ought to have conducted further checks, such as seeing the van in person, before proceeding with the payment.

I've also considered HSBC's representations that it provided an effective warning to Mr and Mrs T, but disagree that it did. The warning HSBC presented is heavily text based, which I think reduces the overall impact of the warning, particularly as the first portion of it prior to the bullet points focuses heavily on scams involving either coaching by the scammer, or invoice intercept scams, all of which weren't a feature in this scam.

I appreciate HSBC has commented on the number of previous warnings Mr and Mrs T have been presented with - and that this should've made the warning more impactful. Regardless of this, the initial test of whether a warning is effective under the CRM Code is an objective one. Before going on to consider Mr and Mrs T's *response* to any warning provided, I first need to be satisfied that HSBC met the requirements of the CRM Code to rely on this exception. For the reasons I've explained above, I don't think it has. I therefore think it's fair that HSBC also shares 50% liability for Mr and Mrs T's losses.

Once it was made aware of the scam, HSBC contacted the beneficiary bank the same day. As Mr and Mrs T reported the scam around two days after it had occurred, I don't think any swifter action on HSBC's part would've likely impacted the outcome for Mr and Mrs T – as I think it's more likely than not that funds would have been moved on by the fraudster by the time Mr and Mrs T had contacted HSBC.

Lastly I've considered the compensation award HSBC made to Mr and Mrs T. I can imagine HSBC's service issues would've added frustration to Mr and Mrs T at an already stressful time. I therefore think the compensation HSBC has provided is fair to apologise for these errors.

My final decision

My final decision is that I uphold Mr and Mrs T's complaint against HSBC UK Bank Plc in part. I require HSBC to:

- refund 50% of the £3,500 payment Mr and Mrs T made to the fraudster (totalling £1,750)
- Apply 8% simple interest, from the date HSBC declined to reimburse Mr and Mrs T under the CRM Code, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 22 April 2024.

Kirsty Upton
Ombudsman