

## **The complaint**

Ms C complains that HSBC UK Bank Plc won't refund her the money she sent to a fraudster.

Ms C has been professionally represented in bringing her complaint, but for the ease of reference, I'll refer to any submissions and comments made as being made by Ms C herself.

## **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 around September 2020, Ms C moved to the UK from China, while her child settled at a new University. Unfortunately, due to the Covid-19 pandemic, Ms C was then unable to travel home as expected and remained in the UK away from most of her family.

Looking to fill her time with new hobbies, Ms C began using an online app to learn another language. Through the app she made, who she believed was a friend, who would help with her language practice. Sadly, unknown to Ms C at the time, this individual was in fact a fraudster.

After a few months of speaking, the fraudster started asking Ms C for financial help for a number of different apparent issues, informing Ms C that he had trouble accessing his bank account while on business in China and needed her to send funds to a number of 'agents' who could then provide the funds to him. In total, Ms C sent over £300,000 to the fraudster, across over 60 payments, to around 20 payees in the space of seven months.

When the fraudster cut contact with Ms C, she realised she'd been the victim of a scam and contacted HSBC to raise a fraud claim and complaint. As HSBC didn't respond to Ms C's complaint within the permitted timeframes, Ms C brought the complaint to our service.

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 APP scams like this in all but a limited number of circumstances. In its submissions to our service, HSBC claimed one of more of these exceptions applies to Ms C's complaint.

HSBC has said Ms C didn't have a reasonable basis for believing she was making legitimate payments. It didn't consider the requests made by the fraudster were realistic or made sense. HSBC has also said that Ms C ignored effective warnings it provided on several intervention calls.

An investigator considered Ms C's complaint and didn't uphold it. He considered Ms C ought to have had doubts on the legitimacy of the fraudster, based on the reasons for their requests for payment and the lack of evidence provided to support these requests. He also considered that Ms C had consistently misled HSBC on the purpose of the payments she was making, impeding HSBC in providing an effective warning for her actual payment purpose.

As Ms C disagreed with the investigator's opinion, 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'm very sorry to hear of the circumstances Ms C found herself in during this scam. I have no doubt this must have been an incredibly difficult time for her and I don't underestimate the impact scams like this have on individual's lives.

However, in deciding what's fair and reasonable in all 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 at 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 consumer 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 consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have reimbursed Ms C under the provisions of the CRM Code and whether it ought to have done more to protect Ms C from the possibility of financial harm from fraud.

There's no dispute here that Ms C was tricked into making the payments. She thought she was making genuine payments to help a friend - and that didn't happen. But this isn't enough, in and of itself, for Ms C to receive a refund under the CRM Code. The Code places a level of care on Ms C too.

### *The CRM Code*

As I've mentioned, HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (the 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 and it is for HSBC to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

*\*Further exceptions outlined in the CRM Code do not apply to this case.*

I think HSBC has been able to establish that it may choose not to fully reimburse Ms C under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

*Did Ms C have a reasonable basis for believing the transactions were genuine?*

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I think the concerns HSBC has raised about the legitimacy of the transactions Ms C was making are enough to support its position that she didn't have a reasonable basis for believing the person she transacted with was legitimate. I'll explain why.

Ms C has explained her relationship with the fraudster was purely friendship-based and she knew him for a few months before he made the first payment request. However, it strikes me as unusual that the fraudster would have no closer family, friends, or work colleagues who would be able to assist him with financial issues than Ms C, who he had only known for a short period of time.

The fraudster initially said that the reason he needed funds from Ms C was that he had travelled to China for business and that his UK bank account had been locked so he was unable to access his funds. I don't consider it particularly realistic that the fraudster would've been able to travel to China, considering the lockdown restrictions in place at the time – as it was these lockdown restrictions that were causing Ms C to not return home herself. Additionally, I don't find the fraudster's explanation of his account being locked entirely persuasive – the fraudster was able to provide Ms C with copies of his identification, so it seems he ought to have been able to do the same with his bank to resolve any issues relatively quickly.

Despite this, Ms C continued to send funds to the fraudster for many months on the proviso that he was unable to access funds in the UK. I find these sorts of timeframes unrealistic to be living without access to money, or being able to resolve the matter with your bank, even from abroad.

Ms C was contacted by HSBC on a number of occasions to question the payments she was making to the fraudster, throughout all of which Ms C advised HSBC she was completing various renovation projects on her home. Ms C has explained she did so as this is what the fraudster had told her to do. I think it ought to have been a red flag to Ms C that a friend would be telling her to lie to her bank and for her to have questioned the underlying motive for this.

As the scam progressed, the reasons provided by the fraudster grew to include medical bills, funds to cover broken work equipment and money to get home. The requests for funds were almost always a relatively 'rounded' number, such as £5,000, or £10,000. I think the number of requests the fraudster was making and the number of misfortunes he was experiencing also ought to have caused concern for Ms C, as well as why the amounts requested were always for similar values.

Ms C had never met the fraudster in person, but chose to trust that he would keep to his word when returning to the UK that he would return a very large sum of money. I think there was a foreseeable risk here that, based on the infancy of their friendship, this might not happen, but Ms C proceeded in spite of this.

Overall I think there were a number of holes in the fraudsters story that Ms C ought reasonably to have queried before proceeding to send significant funds. I appreciate some of these points in isolation may have been easier to overlook, but when combined, I think it's fair to say that Ms C ought to have proceeded with more caution and further questioned whether the individual she was speaking to was genuine.

*Did HSBC provide Ms C with an effective warning?*

HSBC has provided evidence that it contacted Ms C around eight times during the scam to question payments she was making. Having listened to these calls, I understand that on the first call, Ms C advises the money is for machinery, but as the HSBC advisor isn't able to sufficiently question Ms C over the phone due to what appears to be language barriers, Ms C is sent to branch to complete the verification process. In all other calls Ms C has, when asked what the reason for payment is, Ms C advises she's having work done in her home such as a new kitchen, garden landscaping, extensions and a guest house. Ms C advises she knows the builders personally through friends and therefore knows they are legitimate.

Despite Ms C not providing HSBC with the genuine reason for payment, HSBC did still provide broader warnings that were relevant to the scam Ms C was falling victim to. HSBC advisors told Ms C that fraudsters can 'try to get to know you on social media or other websites, they then ask for money for emergency travel expenses or medical fees'. They also advised Ms C 'often they'll ask you not to discuss with your bank as they want to ensure the payment goes through'. Despite this being the situation Ms C found herself in, throughout questioning, Ms C maintained the payments were purely for building work and so were processed by HSBC.

In later payments Ms C made, HSBC even advised Ms C that she's the only individual making payments to the beneficiary account and they're concerned she's going to be the victim of fraud and scam activity. In another call, the advisor states she's concerned the payment is a scam and she strongly recommends Ms C stops the payment. However, Ms C maintained she wished to continue throughout.

Considering Ms C's payments as a whole, I think HSBC could've intervened sooner in the scam, as the payments were relatively high value from the outset based on her usual account activity. However, even if HSBC had intervened sooner, I don't think this would have made a difference here, based on Ms C's responses to later intervention calls. I can't say HSBC provided 'effective' warnings in these calls – but given they weren't advised of the true nature of the payment, I think this is understandable. Nevertheless they did still provide some information that was relevant to the scam Ms C was falling victim to, and Ms C chose to proceed in spite of this. Therefore, considering the complaint holistically, I think HSBC reacted reasonably given the information they were provided with and there was nothing they could reasonably have been expected to do to break the spell Ms C was under, based on the information available.

When HSBC became concerned towards the end of the scam that Ms C may be a victim of fraud, they raised their concerns with Ms C but she chose to continue with the payments. I think in the circumstances, it was reasonable for HSBC to have processed these payments in line with Ms C's request – while it had clear concerns that Ms C *may* have been falling victim to a scam, there was no definitive evidence of this, and Ms C was able to provide plausible reasons for all payments she was making, as well as provide reasonable responses to additional open questioning by HSBC.

I therefore think the level of intervention HSBC took was fair in the circumstances and I don't think there's more it could realistically have done based on the information provided by Ms C to uncover or prevent this scam.

*Did Ms C's personal circumstances at the time of the scam make her vulnerable under the CRM Code?*

The CRM Code includes a provision for consumers to be refunded in full, where a vulnerability means that they wouldn't have reasonably been able to protect themselves from the scam. I've considered Ms C's circumstances against this provision to consider whether it should apply to her complaint.

I understand Ms C was unexpectedly stuck in the UK during a time of great uncertainty for many people, and I don't doubt this was very difficult for her and no doubt lonely at times. However, I don't think these factors resulted in Ms C being unable to protect herself from this scam – Ms C appears to have still had a support network around her, having stayed with a friend at times while in the UK, and still being in contact with family back home by phone, in the same way she was in contact with the fraudster.

*Did HSBC do enough to recover Ms C's funds?*

Ms C first contacted HSBC to report the scam around nine months after the scam ended. Unfortunately, HSBC failed to contact beneficiary bank providers in an attempt to recover funds until approached again in March 2023, at which point only £2.60 was recoverable. While I would have expected HSBC to act immediately in initiating a recovery of Ms C's funds, I think it's unlikely the delays caused by HSBC made a difference here – I say that because based on what we know about how fraudsters move funds following a scam, and the length of time between Ms C sending funds and first reporting the scam, I think it's most likely the fraudster would already have moved funds on before Ms C first reported the scam. I therefore don't think HSBC's failure to act more swiftly contributed to Ms C's losses.

Overall, while I appreciate this will be incredibly disappointing for Ms C – and I don't underestimate the impact this vicious scam has had on her, I think HSBC has assessed Ms C's complaint fairly and reasonably under the CRM Code and I therefore can't conclude HSBC should be held liable for Ms C's losses.

**My final decision**

My final decision is that I don't uphold Ms C's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 24 April 2024.

Kirsty Upton  
**Ombudsman**