

## **The complaint**

Mr and Mrs M complains that HSBC UK Bank Plc didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs M was considering selling a timeshare when she received a phone call from someone I'll refer to as "the scammer". The scammer seemed professional and knowledgeable and inquired about buying the timeshare on behalf of investors who he said had made too much money in the tax year.

When Mrs M decided to go ahead with the sale, the scammer sent documentation including certified payment instructions, general declarations of payment rights, a contract and bank statements. He said they had a bank account with "Bank B" and between 10 November 2021 and 29 December 2021, Mrs M made four payments to Bank B totalling £47,695.24. The scammer told Mrs M she would need to deposit money so she could open an account with Bank B. He would then send the money back to her. On 10 November 2021, she transferred £4,578.10 to Bank B, which the scammer sent back the following day.

On 14 December 2021, the scammer told Mrs M she needed to pay insurance, so she transferred a further £13,692.01 to Bank B. On 20 December 2021, he said the funds had been seized and she would have to pay taxes on the transfer of the property, so she transferred a further £3,069.09 to the account. And on 29 December 2021, he said the money had been held for money laundering, and that if Mrs M didn't pay for it to be transferred she would be in breach of contract. She sent a further £26,356.04 to Bank B, and when she still didn't receive any money the scammer told her she'd need to send £50,000 for the funds to be released, at which point she realised she'd been scammed.

When Mrs M complained to HSBC, it refused to refund any of the money she'd lost. It said she'd authorised the payments and it had processed the transactions in accordance with her instructions. It said it had contacted the beneficiary bank, but it was unable to take any further action. It recommended Mrs M should raise the dispute directly with the Bank B and report the matter to the police. It also said international payments weren't covered by the Contingent Reimbursement Model ("CRM") Code.

Mr and Mrs M weren't satisfied and so they complained to this service. They said HSBC had failed to intervene and ask probing questions about the payments and had it done so, Mrs M would have been honest about the circumstances and listened to advice that she was being scammed. They said they don't usually make transactions this large, especially to new payees and they wanted HSBC to refund the money they'd lost plus £500 compensation and legal costs.

Their representative said HSBC should have intervened as Mrs M made four payments to a new payee. The account was typically used for bill payments and day to day spending and they rarely made large payments from the account. They said the first payment was a red flag because the amount was unusual and Mrs M was paying a new payee.

They said Mrs M had received a pop up message asking if she was sure she wanted to make the payment but she didn't receive any specific or tailored warnings mentioning fraud or scams. They said HSBC should have asked why she was making the payment, how she found out about the company, whether she'd researched the company, whether someone was pressuring her to make the payment and where the company was based and as she hadn't been coached to lie, it would have identified that she was falling victim to an impersonation scam and provided relevant advice.

Our investigator felt the complaint should be upheld. He noted HSBC had contacted Mrs M when she made the first payment but he didn't think it had done enough during the call. He explained that Mrs M had told the call handler she was selling her timeshare and so it should have asked her why she was making payments if she was the seller. He was satisfied that had it done so it would have identified that she'd received an unexpected call from an unknown person and even though she'd done some research and received some paperwork, it would have been able to warn her that genuine companies can be cloned and ask her to think about why she was being asked to send funds to the seller.

He was satisfied this represented a missed opportunity to have prevented Mrs M's loss and so HSBC should refund the money she'd lost from the first payment onwards. However, he thought the settlement should be reduced for contributory negligence because even though he accepted she'd done some basic research, she had only looked on the company website, she hadn't taken any other steps to verify the business and the fact she'd received a cold call from someone who had her details should have raised concerns. Further, Mrs M should reasonably have questioned why she was being asked to pay fees up front and done due diligence on the account she was paying before making payments to it.

Finally, our investigator noted HSBC had tried to recover the funds but the last payment Mrs M made was on 29 December 2021, and she didn't report the scam until 25 January 2022. And she wasn't entitled to any legal costs or compensation.

Mrs M was happy with the outcome, but HSBC has asked for the complaint to be reviewed by an Ombudsman. It doesn't accept the sale of a timeshare would have been a red flag or that she mentioned this in the call on 10 November 2021. Instead, she said she was buying or upgrading her timeshare and as Bank R was based in the same location as the timeshare, there was no reason to be concerned about the destination of the funds.

It has also argued that during the call, Mrs M said she'd spoken to a broker and 'they confirmed everything was ok'. She also said everything was 'fine as far as I'm concerned', which would have satisfied the call handler the transaction was legitimate.

### **My provisional findings**

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs M say they've fallen victim to, in all but a limited number of circumstances. HSBC has said the CRM code didn't apply in this case because the disputed payments were to an international account, and I was satisfied that's fair.

I was also satisfied Mrs M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't

intend the money to go to scammers, under the Regulations, and under the terms and conditions of the bank account, Mr and Mrs M are presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr and Mrs M didn't intend their money to go to scammers, Mrs M did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### **Prevention**

I thought about whether HSBC could have done more to prevent the scam from occurring altogether. HSBC ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have done more to warn Mrs M when she tried to make the payments.

The first payment flagged as suspicious and HSBC contacted Mrs M before it was released. I listened to the call and Mrs M said she was making the payment to buy or upgrade a timeshare. She said she had opened the recipient account herself and she was sure she wasn't being scammed because she'd been in touch with the company for a week, it was a huge financial company and 'everything was 100%'. She was warned that fraudsters can pose as businesses and that HSBC wouldn't be liable for any loss arising from the payment.

During the call, Mrs M said she was buying or upgrading a timeshare rather than selling it. Significantly, while it would have been a red flag that she was being asked to make payments to an account to then receive payment for the sale of the timeshare, there would have been nothing concerning about the fact she was making payments to an international account for the purchase of a timeshare based in the same country as the recipient account. Because of this, I was satisfied that the answers Mrs M gave to the questions she was asked prevented HSBC from identifying that she was being scammed.

Further, even though HSBC didn't have the full picture, Mrs M was still given scam advice and warned that fraudsters can pose as legitimate businesses. She was also told to conduct further checks on the beneficiary of the funds. But she assured the call handler that she'd done checks and that she was sure she was dealing with a genuine company and in the circumstances I didn't think there was much else the call handler could reasonably have done to get more information or to seek to persuade her to question what she'd been told by the scammer.

I considered whether HSBC ought to have intervened in any of the later payments but even though the second payment was significantly higher than the first payment, it was a month later and by this time she'd received the money back from the first payment. Because of this, I didn't think the second payment would have appeared unusual or suspicious and even if HSBC had intervened, I didn't think there was anything else it could have said to change the outcome because Mrs M would have been even more convinced that she was dealing with a genuine company because she'd received the refund as promised. She had also received some paperwork which further legitimised what she was told by the scammer.

### **Compensation**

I didn't think HSBC needs to pay any compensation given that I didn't think it acted unreasonably when it was made aware of the scam. And Mr and Mrs M aren't entitled to compensation for legal fees, as our service is free to access.

## *Recovery*

The last payment Mrs M made was on 29 December 2021, and she didn't report the scam until 25 January 2022, so I was satisfied there was no prospect of a successful recovery.

## **Developments**

Mrs has indicated that she doesn't accept the findings in my provisional decision. Her representative has said that even though Mrs M is partially to blame for her loss, HSBC is the expert in financial matters and considering the payment was unusual in terms of the value and the recipient, it should have made further enquiries on the intervention call. Specifically, Mrs M wasn't asked what due diligence she'd completed or told what to look out for in terms of this scam type and if HSBC had explained how timeshare scams work, she would have realised she was being scammed.

## **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 considered the further points raised on Mrs M's behalf but I'm afraid the outcome in my final decision will be the same as the outcome in my provisional decision. There's no dispute that the first payment was unusual, which is why HSBC blocked the payment and contacted Mr M to question her. Her representative has suggested that HSBC didn't do enough during the call, but I disagree. As I said in my provisional decision, I'm satisfied Mrs M was questioned appropriately and that the answers she gave to the questions she was asked prevented HSBC from identifying that she was being scammed.

I'm also satisfied that even though HSBC didn't have all the facts, Mrs M was still given relevant scam advice and told to make further checks on the payee. Her representative has suggested it should have given her a tailored warning about timeshare scams, but I wouldn't expect the call handler to have second guessed what Mrs M said about the payment in circumstances where she had said she was buying/upgrading a timeshare rather than selling one and giving assurances that she had checked the payee was genuine. Further, it's clear Mrs M was convinced the payee was genuine and I don't think there was anything the call handler could have said to change that.

Consequently, I remain satisfied HSBC took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Mr and Mrs M have lost money and the effect this has had on them. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything to resolve this complaint.

## **My final decision**

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 25 April 2024.

Carolyn Bonnell  
**Ombudsman**