

The complaint

Mr A is unhappy HSBC UK Bank Plc ('HSBC') hasn't refunded him the money he lost after falling victim to an Authorised Push Payment ('APP') car purchase scam.

Mr A has referred the complaint to this service with the assistance of a family member. For ease of reading, I will refer solely to Mr A throughout this final decision.

What happened

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary, Mr A fell victim to a car purchase scam.

In 2023, Mr A was looking to buy a car and found one through a well-known online selling website. Mr A contacted the seller and agreed a price of £9,000 for the purchase of the car. On 4 November 2023, Mr A transferred £1,000 to the bank details provided which was as a deposit. The seller then got in contact and asked for a further amount – advising they were also buying a car and needed more money and didn't want to take money out from their ISA and couldn't wait until Mr A completed the sale. Mr A, believing everything to be genuine and legitimate, made a further payment of £2,500 on 6 November 2023 with the remaining amount to be paid upon collection.

Mr A had booked train tickets to go and collect the car, but prior to collection, the seller stopped responding and cut all contact. Mr A realised he had fallen victim to a scam.

Mr A contacted HSBC to report the matter and to see if it could recover or reimburse his funds.

HSBC subsequently contacted the Receiving Firm (the beneficiary bank where the funds had been sent to), but unfortunately no funds remained and so there was nothing to return to Mr A.

Mr A also made a complaint to the Receiving Firm, as he was unhappy as one of its accounts had been opened, and was being used, fraudulently. Mr A was refunded 50% of his loss by the Receiving Firm, as it accepted its share of liability advising there were failings on its side and it could have done more.

HSBC also considered whether Mr A was due a refund of the funds he lost. HSBC considered the case under the Lending Standards Board 'Contingent Reimbursement Model' (referred to as the 'CRM Code') which it was a signatory of at the time of the payment.

The CRM Code was implemented to reduce the occurrence of APP scams. The CRM Code required firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out what is expected of the 'Sending Firm' and it also sets out the obligations for the 'Receiving Firm'.

Under the CRM Code, where there is a failing by either the Sending Firm or Receiving Firm, they may be required to reimburse the customer. And, importantly, the customer may also be required to share some responsibility for the loss if it is determined that one of the exceptions to full reimbursement, as set out within the CRM Code, applies.

HSBC didn't agree that it was liable to reimburse Mr A for the funds he had sent. It considered Mr A chose the wrong payment purpose when he made the payment – selecting 'Paying friends and family'. And if Mr A had selected the correct payment purpose, he would have seen a relevant warning that would have advised him to view the item before sending the funds. HSBC also considered Mr A didn't take reasonable precautions before sending the funds.

Unhappy with HSBC's response, Mr A brought his complaint to this service. One of our Investigator's looked into things and didn't uphold the complaint. In short, they considered one of the exceptions to re-imbursement under the CRM Code applied, in that Mr A made the payment without having a reasonable basis for believing that the person or business with whom he transacted was legitimate. They ultimately considered the price of the vehicle was too good to be true and ought to have given Mr A a cause for concern that all might not be as it seemed. And given the value of the payments they didn't consider, under the CRM Code, that HSBC was required to display an effective warning as part of the payment process. So, our Investigator agreed HSBC had acted fairly and reasonably in choosing to decline reimbursement under the CRM Code.

Mr A didn't agree with the Investigator's opinion. He considered he had fallen victim to a scam, had carried out enough checks and believed it was a legitimate payment to a legitimate seller. Mr A remained of the opinion he should be reimbursed his outstanding loss.

As agreement couldn't be reached, the complaint has been passed 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 aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. And that is whether it was fair for HSBC to decline reimbursing Mr A under the provisions of the CRM Code. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm sorry to disappoint Mr A, but I'm not upholding his complaint. I know he's been the victim of a cruel scam, and I don't doubt that these events have had a significant impact on him. But I don't believe HSBC has acted unfairly or unreasonably in not reimbursing Mr A under the provisions of the CRM Code. I'll explain why.

There's no dispute that Mr A authorised the payments that are the subject of this complaint, even though he did so as a result of being deceived by a fraudster. Broadly speaking, under the account terms and conditions and the Payment Service Regulations 2017 (which are the relevant regulations here), he would normally be liable for them. But that isn't the end of the story.

Where a customer has been the victim of a scam it may be appropriate for the bank to reimburse the customer, even though payments have been properly authorised. Of particular relevance to the question of what is fair and reasonable in this case is the CRM Code.

The CRM Code requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances. Under the CRM Code, a Sending Firm 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.*

In this case, I think HSBC has been able to establish that it may choose not to reimburse Mr A 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.

I have taken into account all of the circumstances of this case, including the characteristics and complexity of the scam. Having done so, I think the concerns HSBC has raised about the legitimacy of the transaction Mr A made are enough to support its position that he didn't have a reasonable basis for believing the person or business with whom he transacted with was legitimate. I'll explain why.

In order to determine whether this exception to reimbursement applies, I must ask if Mr A made the payment he did whilst having a reasonable basis for belief that all was genuine. I'm afraid I don't find that's the case having considered the price / valuation of the car.

Mr A advised that he had carried out the relevant checks – and he has provided a check from a company that Mr A said he completed at the time. While the check submitted is dated April 2024, Mr A has provided it as an example of the check he carried out at the time.

Mr A has said he thought the cost wasn't far off other similar vehicles in that class and thought it was reasonable. But I disagree.

Having reviewed our Investigator's comments on this aspect – and considering the make, model, year and mileage, of the car in question – I agree that the price Mr A thought he was purchasing it for was significantly lower than what it typically cost. By all accounts it was undervalued by, not just hundreds of pounds but thousands of pounds.

Mr A was purchasing a car for an agreed price of £9,000 and from what I have seen, similar make and models are listed for around £14,000 plus.

From looking at the check Mr A provided, I can see that there is a section that covers off the 'Vehicle valuation'. This states the following approximate prices for the car in question:

<i>On the Road (OTR)</i>	<i>£34,944</i>
<i>Dealer value</i>	<i>£21,450</i>
<i>Auction value</i>	<i>£16,050</i>
<i>Poor trade in value</i>	<i>£16,050</i>

So, the car being sold for the price it was, ought to have given Mr A cause for concern that something might not be right.

The price or valuation of the car is an important factor here, as I find it should have given Mr A cause for concern that it may not have been a legitimate sale. I don't think a seller would realistically sell a car for this much under the going retail value or even trade / auction average. I think the price for the car was simply too good to be true from the outset and to such an extent that it ought to have raised more than a significant doubt on Mr A's part.

The price ought to have led to Mr A questioning whether all was as it seemed. I think it is reasonable to suggest that Mr A could have carried out some basic research on the typical cost or average cost of the same car and that he would have seen other car dealers / traders' websites and would have reasonably known the average price for a car of that model and specification – as indicated to him by the check he advised he had already carried out. But it doesn't appear Mr A asked any questions around the price being what it was. So, I think the value of the car potentially posed a significant risk and that this should have led to sufficient checks being carried out to ensure that it was a legitimate sale and that the car actually existed.

Overall, I think there were some warning signs here, and Mr A needed to approach the purchase with considerable caution to ensure that the vehicle actually existed and that he was dealing with a legitimate seller.

So, I think HSBC can fairly rely on one of the exceptions to reimbursement – that Mr A made the payment without a reasonable basis for believing that the seller was legitimate.

Should HSBC have done anything else to prevent the scam?

Good industry practice requires that regulated firms such as HSBC engage in the monitoring of customer accounts and to be on the lookout for suspicious or out of character transactions with an aim of preventing fraud and protecting customers from financial harm.

And under the CRM Code, where it identified a risk of a customer falling victim to an APP scam, it was required to provide that customer with an 'effective warning'.

We now know, with the benefit of hindsight, that Mr A was falling victim to a scam. But based on the information that was available to it at the time, I don't consider HSBC would've had any reasonable basis for believing that its customer was falling victim to an APP scam at the time the payment was made. So, when considering the CRM Code, it wasn't required to provide its customer with an 'effective warning' – as defined by the CRM Code. I say this because I don't consider the payments appeared so out of character or unusual and the payments weren't particularly large or remarkable.

HSBC did provide a warning, and Mr A had selected 'Paying friends and family' as the payment purpose. Given I don't consider HSBC was required to provide an 'effective warning' in the circumstances of this case, I can't fairly or reasonably conclude that HSBC hasn't met its obligations under the CRM Code. And the warning shown, based on what HSBC knew at the time (through the payment purpose selection), was proportionate to the risk the payment presented, and I wouldn't have expected it to have done anymore.

Also, I'm not persuaded it would've had any grounds for intervening to question the payments any further with Mr A, such as through human intervention, before allowing it to be processed. So, I can't fairly say it would have been able to prevent Mr A's loss.

Recovery of funds

I have also considered whether HSBC did all it could to try and recover the money Mr A lost. There was a slight delay on HSBC's part. But unfortunately, it is common for fraudsters to withdraw or move the money on as quickly as possible. And here, while HSBC could have acted sooner than it did, I have seen evidence that the funds had already been moved on / utilised by the beneficiary account five days prior to Mr A reporting the matter to HSBC. So, HSBC wouldn't have been able to recover Mr A's funds in any event.

Summary

With all of this in mind, I am sorry that Mr A lost his money this way and fell victim to a cruel scam and is out of pocket as a result. And I don't underestimate his strength of feeling and why he thinks this money should be returned in full. But for the reasons explained, I don't find that he had a reasonable basis for believing that the person or business with whom he transacted was legitimate. So, I don't consider HSBC has acted unfairly or unreasonably in not reimbursing Mr A under the provisions of the CRM Code. And it isn't liable for the loss either, as I don't find it could have reasonably prevented his loss or recovered the funds as they had already been moved on instantly.

My final decision

For the above reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 May 2025.

Matthew Horner
Ombudsman