

## **The complaint**

Mr K complains that HSBC UK Bank Plc ('HSBC') hasn't refunded the money his business ('N') lost when he fell victim to an authorised push payment ('APP') scam.

Mr K's asked HSBC to reimburse N's loss, along with 8% simple interest, plus £300 compensation for distress and inconvenience.

While the complaint relates to a business current account in N's name, Mr K operates as a sole trader, rather than a limited company, and it was Mr K who fell victim to the scam. So, for ease, I'll refer to Mr K throughout this decision.

## **What happened**

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But I will briefly summarise what's happened.

In September 2023, Mr K made a £3,500 faster payment from his business current account as part of an APP scam. Mr K thought he was making the payment on behalf of his daughter, who he believed had contacted his wife ('Mrs K') from a new phone number.

Unknown to Mr K at the time of the payment, Mrs K had been contacted by a scammer, impersonating their daughter, who said they needed help paying the deposit for a car purchase.

Mr K made the payment directly to the person he believed was selling the car. When Mr K realised he'd fallen victim to a scam, he notified HSBC and asked for a refund.

HSBC was a signatory of the Lending Standards Board Contingent Reimbursement Model Code ('the CRM Code'), which required firms to reimburse customers who'd been the victims of APP scams like this in all but a limited number of circumstances. HSBC said one or more of those exceptions applies in this case and so it declined to refund Mr K's loss.

Unhappy with HSBC's response, Mr K raised a complaint. HSBC reiterated its decision not to reimburse him and so Mr K asked this service for help.

Our Investigator felt HSBC ought to have refunded Mr K's loss in full, plus 8% simple interest from the date HSBC declined Mr K's claim for reimbursement until the date of settlement.

Mr K accepted our Investigator's opinion, but HSBC didn't agree.

As an agreement couldn't be reached, the complaint has been referred to me to decide.

## **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.

Having done so, I'm satisfied that:

- under the terms of the CRM Code, HSBC should've refunded the money Mr K lost. I'm not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case;
- in the circumstances, HSBC should now fairly and reasonably refund the money Mr K lost; and
- the money was taken from Mr K's business current account. It's not clear how Mr K would've used the money if HSBC had refunded it when it should've done, so HSBC should also pay interest on the money it should've refunded at 8% simple per year from 15 September 2023 (the date HSBC declined the reimbursement claim) until the date of settlement.

I've carefully considered HSBC's representations about the warnings it gave and whether Mr K had a reasonable basis for believing the transaction to be genuine. But they don't persuade me to reach a different view to our Investigator.

In particular I'm not persuaded that Mr K failed to take the requisite level of care required for HSBC to choose not to reimburse him under the CRM Code.

In this case I'm satisfied that the requirements of the "*effective warning*" exception weren't met because:

- the "*Fraud alert*" Mr K was shown provided some impersonation scam education, but this didn't cover WhatsApp impersonation scams (the scam scenario Mr K fell victim to);
- the "*Fraud alert*" said Mr K should contact the payee directly using a telephone number he'd obtained from a "*trusted source*", but Mr K thought the payment instruction had come from his daughter – a "*trusted source*";
- the "*Fraud alert*" didn't sufficiently highlight the importance of making a phone call to the payee (or person requesting payment), or how it could prevent an impersonation scam;
- in any event, Mr K received a confirmation of payee result which said the payee name matched the beneficiary account and so I don't think the advice in the "*Fraud alert*" warning reasonably ought to have resonated with Mr K at the time; and
- the "*Fraud check*" Mr K was shown said fraudsters could pose as a genuine business or professional contact, but (similar to the "*Fraud alert*") this warning didn't cover scammers posing as relatives on WhatsApp.

Overall, I'm not satisfied that the warnings HSBC provided when Mr K made the scam payment met the requirements of an "*effective warning*" under the CRM Code, as they weren't specific or impactful to Mr K in the circumstances of the payment he was making.

As a result, I'm persuaded HSBC can't rely on R2(1)(a) of the CRM Code to refuse reimbursement on the basis that Mr K "*ignored effective warnings*".

I'm also satisfied HSBC hasn't shown that Mr K lacked a reasonable basis of belief because:

- the scammer made contact with Mrs K and requested communication via WhatsApp, which was how Mr and Mrs K typically communicated with their daughter;
- Mrs K was provided with a plausible explanation for why their daughter had changed phone numbers (i.e., to avoid unsolicited calls from unknown numbers);
- the scammer provided a plausible explanation for why they needed to make a payment urgently (i.e., the deposit for a car purchase to prevent it being sold to another potential buyer);
- the scammer provided a plausible explanation for why they couldn't make the payment themselves (i.e., they were unable to access their online banking due to changing phone number);
- Mr and Mrs K's daughter suffers with post-traumatic stress disorder and the scammer's messages were expressing signs of distress. This helped to persuade Mrs K that she was communicating with her daughter;
- Mrs K was satisfied she was communicating with her daughter and so when she asked Mr K to make the payment, I think it was reasonable that he trusted what his wife was telling him;
- Mr and Mrs K have a good relationship with their daughter and have provided financial assistance to her in the past and so, as their daughter lives alone, it wasn't suspicious that she would ask them for help; and
- as a parent, this situation fuelled Mr K's paternal instincts to want to help his daughter overcome a stressful situation that appeared to be negatively impacting her mental health.

Based on Mr K's circumstances at the time the scam payment was made, I'm satisfied HSBC can't rely on R2(1)(c) of the CRM Code to refuse reimbursement on the basis that he didn't have a reasonable basis for believing he was making a genuine transaction at the request of his daughter.

### **My final decision**

For the reasons explained, I uphold the complaint. To resolve the complaint, HSBC should:

- refund Mr K's loss of £3,500 in full; and
- pay 8% simple interest per year on that amount, calculated from 15 September 2023 (the date HSBC declined Mr K's reimbursement claim) until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 1 January 2025.

Liam Davies  
**Ombudsman**