

The complaint

Miss S complains that HSBC UK Bank Plc won't reimburse her after she fell victim to a scam.

What happened

Miss S has explained that she was looking for a space to host a party for around 70 people, with space for four to sleep. She found a purported company on a social media platform, offering a four bedroom penthouse in a central London location for £125, plus an additional night free. Unfortunately, unknown to Miss S at the time, the 'company' was in fact a fraudster.

Miss S asked some questions of the fraudster promoting the penthouse, such as why the accommodation was so cheap, how she can be sure it's genuine (as she'd seen other examples of accommodation on offer on social media pages, with multiple accounts offering the same rooms), whether she can pay using a secure method such as PayPal and whether the company can provide her with any reviews. In response, Miss S was told that the company owns the property and therefore has no rent fees, which is why it can be offered at a cheaper price. She was also sent a screenshot of a Companies House register, for a firm by the same name as what the fraudster was using. Miss S was told that the company only currently accepts bank transfers and currently didn't have a reviews page available, but provided another screenshot from what they stated was a customer, who had just left one of their properties, thanking them for the stay.

On this basis, Miss S decided to proceed with the booking. Miss S was then told that as she was hosting a party, she would need to pay an additional security deposit of £100.

Miss S paid £190 of the £225 payment request (the room payment plus deposit). However, the fraudster then told Miss S that due to her age and security issues with her banking, they now required an additional £250 security deposit, which would be refunded as soon as she arrived. Therefore Miss S also made this second payment.

However, the fraudster then told Miss S that unfortunately, due to her age, the number of guests and the security on her bank account, it would need to cancel and refund her booking. It said the only alternative would be for her to pay a much larger deposit of £475. After questioning this further, keen to secure the accommodation, Miss S made the payment as requested.

Miss S also went on to make some further payments through another of her banking providers. However, when the company advised it would refund some of Miss S' funds and failed to do so, she realised she'd been the victim of a scam, and contacted HSBC to raise a scam claim.

HSBC investigated Miss S' claim and considered its obligations to provide her with a refund. 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. HSBC says one or more of those exceptions applies in this case.

HSBC has said Miss S didn't complete enough checks to assure herself that she was making a legitimate payment. It also said it spoke to Miss S during some of the payments and didn't receive accurate information for the payment purpose.

Miss S remained unhappy and referred her complaint to our service. An investigator considered the complaint but didn't uphold it. She didn't think Miss S had done enough to satisfy herself that this was a genuine deal, and proceeded in spite of red flags that she appeared to have identified prior to making payments. She also didn't think there was a requirement on HSBC to have further intervened, based on the value of the payments Miss S made.

Miss S disagreed. She considered she had asked enough questions to satisfy herself that this was a legitimate offer and had also spoken to someone else who appeared to have booked through the same company.

As Miss S remains unhappy, 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.

Having done so, while I'm sorry to disappoint Miss S, I'm not upholding her complaint. I'll explain why.

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 Miss S under the provisions of the CRM Code and whether it ought to have done more to protect Miss S from the possibility of financial harm from fraud.

The CRM Code

As mentioned, HSBC is a member of the Lending Standards Board CRM Code. The CRM Code 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 Miss S 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.

Taking into account all of the circumstances of this case, I don’t think there is enough to support a position here that Miss S had a reasonable basis for believing she was paying a legitimate individual. I’ll explain why.

Miss S has explained that when she first saw the penthouse advertised online, the price quoted for a night’s stay was £125. From the messages I’ve read between Miss S and the fraudster, it appears the penthouse was presented as being in a popular part of London, as having four bedrooms, and based on Miss S’ requirements, it was considered large enough to fit 70 guests for a party. The fraudster presented it as their premium property. On this basis, I think the price Miss S was told for a night’s stay (without even factoring in that a second night was offered for free) was simply too good to be true and not comparable to anything else of this size in this area.

Additionally, Miss S explained herself within the messages that she was sceptical and highlighted a number of concerns, such as the platform she found the penthouse on advertising other houses on various accounts, all claiming to offer it as accommodation, the fraudster’s inability to receive payments via other methods, not being able to see the property first and not being able to see more than one review. Miss S had also very recently fallen victim to another scam when attempting to secure accommodation. While this was on another sales platform, I think this ought to have made Miss S more cautious and alive to the potential for fraudsters to operate in this sector.

I appreciate Miss S was reassured when she was provided with a screenshot of a Companies House page, showing a business registered in the name of the firm she believed she was speaking to. However, there was nothing to evidence that the individual she spoke to worked for the company listed in the screenshot – and the name of the account she sent funds to was not listed as an owner of the firm on that page.

For these reasons, I don’t find Miss S had a reasonable basis for believing she was paying a legitimate firm and so fell below the level of care expected of her under the CRM Code.

Should HSBC have done more to try to prevent the scam and protect Miss S?

I’ve thought about whether HSBC did enough to protect Miss S from financial harm. The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Miss S made this payment, HSBC should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might

indicate that its customers were at risk of fraud (among other things). Having considered the payments Miss S made, I don't think they were so remarkable, or out of character in comparison to her usual account activity, that they should've appeared as suspicious to HSBC. I appreciate HSBC *did* speak to Miss S on the phone as she encountered issues when making the first two payments, but I don't think, based on the risk presented with these payments, that it needed to probe Miss S on the payments any further than it did. I therefore don't think HSBC failed to meet its standards under the Code by not providing Miss S with an effective warning, prior to processing the payments.

Once it was made aware of the scam, HSBC contacted the beneficiary account within a reasonable timeframe to attempt to recover Miss S' funds but unfortunately, no funds were recovered. I don't think there's anything more HSBC could reasonably have done to recover Miss S' funds.

Overall, while I'm sorry to disappoint Miss S and don't underestimate the impact this scam would have had on her, I don't think HSBC should be held liable for Miss S' losses under the CRM Code. And so I don't intend to make an award to Miss S.

My final decision

My final decision is that I don't uphold Miss S' complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 31 December 2024.

Kirsty Upton
Ombudsman