

## The complaint

Mr and Mrs S complain that HSBC UK Bank Plc won't refund the money they lost when they were the victims of a scam.

## What happened

In 2019, Mrs S's brother was told his father-in-law had left a significant amount of money unclaimed when he died abroad. Mrs S says he spoke to a number of people about claiming the money and made a number of payments to pay for various fees, taxes and documents he was told were needed before the money could be released to him.

In 2023, Mrs S's brother was told the money had been delivered to the UK, but some final documents were required before it could be released. And, as he had run out of money at this point, he asked Mrs S to help pay these costs. Mrs S agreed and two payments of £1,500 were made from Mr and Mrs S's account with HSBC to pay for the documents.

After these payments were made, Mrs S and her brother were told more fees needed to be paid. Mrs S then became suspicious and reported the two payments made from Mr and Mrs S's account to HSBC as a scam.

Mrs S was then contacted by the delivery company again and assured that this would be the last payment before the money would be released. So a third payment of £8,000 was then made from Mr and Mrs S's account with HSBC to pay these fees. But unfortunately, Mrs S was told the next day that a further fee needed to be paid, so she contacted HSBC again and reported this third payment as a scam as well.

HSBC investigated but said it felt it had sufficient fraud prevention measures in place when the payments were made. It also said it felt Mr and Mrs S could have taken more caution and carried out further checks before making the payments, so it didn't agree to refund the money they had lost. Mr and Mrs S weren't satisfied with HSBC's response, so referred a complaint to our service.

I sent Mr and Mrs S and HSBC a provisional decision on 28 June 2024, setting out why I was intending to uphold the complaint in part. An extract from my provisional decision is set out below:

*"In broad terms, the starting position in 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 customer 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 customer even though they authorised the payment.*

*HSBC is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr and Mrs S fell victim to, in all but a*

*limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.*

*Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:*

- The customer ignored an effective warning in relation to the payment being made*
- The customer made the payment without a reasonable basis for believing that:
  - o the payee was the person the customer was expecting to pay;*
  - o the payment was for genuine goods or services; and/or*
  - o the person or business with whom they transacted was legitimate**

*There are further exceptions within the CRM code, but these don't apply here.*

*Did Mr and Mrs S have a reasonable basis for belief when making the payments?*

*HSBC has argued that Mr and Mrs S didn't have a reasonable basis for belief when making these payments, because they could have taken more caution and carried out further checks before making them. And while I appreciate they have been the victims of a cruel scam, I do think there were a number of things about what was happening and what they were told that should have caused Mr and Mrs S significant concern.*

*Mrs S says her brother was initially told his father-in-law had left many millions of pounds unclaimed when he died abroad. But I think it's unlikely that the father-in-law had such a significant amount of money that the rest of the family was seemingly unaware of, or that it took more than 20 years for his surviving relatives to be identified and contacted, as they were told. So I don't think the initial story they were told was plausible, and I think this should have caused Mr and Mrs S significant concern.*

*Mrs S also says that, before these payments were made, her brother had been trying to claim and arrange the delivery of the money for several years and had paid thousands of pounds to a number of different people for a number of different reasons. And I think the amount of time this process had taken and the amount of money her brother had been asked to pay before receiving any of the money he was supposedly due should also have caused Mr and Mrs S significant concern.*

*I've seen copies of some of the documents Mrs S and her brother were sent during the process of claiming the money, as well as some of their communication with the people involved. But these documents and this communication contain a number of spelling and grammatical errors, which I wouldn't expect from such supposedly official documents or people in such supposedly official positions. So I think these errors should also have caused Mr and Mrs S significant concern.*

*I sympathise with the position Mr and Mrs S have found themselves in, and I appreciate that they have been the victims of a cruel scam. But I think there were a number of things here which should have caused them concern. And I don't think the checks they did, or the seemingly genuine information they were given should have been enough to overcome the concerns I think they should have had.*

*So I think HSBC has established that Mr and Mrs S made the payments without a reasonable basis for belief that they were genuine. HSBC has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr and Mrs S all the money they lost.*

*Did HSBC meet its obligations under the CRM code?*

*Even though I don't think they had a reasonable basis for belief when making the payments, Mr and Mrs S may still be entitled to a refund of some of the money they lost if HSBC didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.*

*But the first two payments they made from their account as a result of this scam weren't for what I'd consider to be particularly large amounts of money, or for amounts where I'd expect HSBC to identify them as suspicious based on their size alone. Mr and Mrs S had made payments out of their account for similar amounts in the previous months. And the payments didn't leave the balance of their account at particularly suspicious levels. So I wouldn't have expected HSBC to identify a scam risk as a result of these payments. And I don't think it was required to provide an effective warning before Mr and Mrs S made these two payments or that it has failed to meet its obligations under the CRM code by failing to do so.*

*When Mr and Mrs S tried to make the third payment here though, for £8,000 on 3 March 2023, I think HSBC should have identified a scam risk. This payment was for a significantly larger amount, and for an amount significantly larger than any other payment made out of their account in the previous months. It was also made to a new payee Mr and Mrs S had never sent a payment to before. And it was made soon after a similarly sized credit into the account. So I think HSBC should have identified a scam risk as a result of this payment, and shown Mr and Mrs S an effective warning before allowing it to go through.*

*The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.*

*HSBC has sent us a copy of the warning Mr and Mrs S were shown before making this payment, which said:*

***“Caution – This could be a scam***

***WARNING – if someone has told you to mislead us about the reason for your payment and/or choose the wrong payment type, **stop, this is a scam.*****

*Fraudsters may advertise products, goods or services on social media or other online marketplaces. In some cases, they even set up and use legitimate-looking websites.*

***What you need to do before making the payment:***

- ***Stop and think*** – does this seem right? Is the offer for a limited time or too good to be true?
- ***Don't make the payment*** if you're asked to pay by bank transfer rather than using a more secure way eg a credit or debit card, which gives you more protection against fraud
- ***Don't make the payment*** if you're asked to send it differently to how you normally would
- ***Beware of false websites and reviews*** and thoroughly research the seller online using trusted review sources before sending any money
- ***If you're paying for a high value item*** like a car, make sure you physically see it before making a payment
- ***If you've been asked to purchase via a website*** always type the address into your web browser and be wary of using links in unsolicited emails

**IMPORTANT: By choosing to continue, you agree you've read this warning, you're happy to proceed and that we may not be able to recover your payment if it's sent to a fraudster's account. If you have any doubts or concerns at all, please stop immediately."**

*But this warning wasn't relevant to Mr and Mrs S's circumstances or the type of scam they were falling victim to. So I don't think it was specific enough to be effective in their circumstances.*

*HSBC also says it spoke to Mrs S when she reported the first two payments a few days before the payment on 3 March 2023, and warned her to be wary of any further contact relating to the scam. It says that, as Mr and Mrs S made the third payment despite this warning, there was nothing it could have done to prevent the scam. But, having listened to a recording of this phone call, I don't think the warning HSBC gave Mrs S was either effective under the CRM code or enough to say that Mr and Mrs S would have made the payment even if an effective warning had been given.*

*In the call, HSBC advises Mrs S to verify any company she is dealing with, to check independent reviews, and to ensure firms are registered with their relevant governing body. It says to be wary of being contacted out-of-the-blue, to assess what's she's told and consider if it is logical. And HSBC says to be wary about any future contact Mrs S gets claiming to help with an inheritance, and that she may get future contact from people who know details of the previous situation, but it will all still be linked to the previous scam.*

*But I don't think this warning was clear enough about the type of contact Mr and Mrs S could get in the future, or the checks they could do to check whether it was legitimate. And this warning was delivered several days before the payment on 3 March 2023. So I don't think it was specific or timely enough to be effective in Mr and Mrs S's circumstances.*

*I also think HSBC could have been clearer with Mrs S in the call that she and her brother had been the victims of a scam and that she shouldn't enter into any further communication with anyone relating to the inheritance.*

*So I don't think the evidence suggests that Mr and Mrs S would have made this third payment to the scammer in any event. They clearly had concerns about the circumstances, as they reported the first two payments to HSBC. So, based on the evidence I've seen, I think it's likely that a clearer, more specific and more timely warning from HSBC would have had a material effect on preventing the scam. And so I think it would still be fair to hold HSBC responsible for failing to meet its obligations under the CRM code here.*

### *Summary*

*Overall then, I think HSBC has established that Mr and Mrs S made all three payments without a reasonable basis for belief that they were genuine, and so one of the exclusions to reimbursement applies and it doesn't have to refund all the money they lost. But I don't think HSBC met its obligations under the CRM code in relation to the third payment of £8,000 on 3 March 2023.*

*Where one of the exclusions to reimbursement applies, but a firm has failed to meet its obligations, the CRM code sets out that the firm should refund 50% of the money the customer lost. So I think it would be fair for HSBC to refund 50% of the money Mr and Mrs S lost from the third payment of £8,000 on 3 March 2023 here.*

*Did HSBC do enough to recover the money Mr and Mrs S lost?*

*We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.*

*HSBC's evidence shows it contacted the bank the payment was sent to within a reasonable amount of time, to ask for the money to be returned. So while unfortunately only £122.41 of the money Mr and Mrs S sent could be recovered, HSBC has done all I would expect it to have done."*

I said I'd consider anything further Mr and Mrs S and HSBC sent in following the provisional 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.

Mr and Mrs S responded to the provisional decision that they were disappointed with the outcome, but decided to accept it.

HSBC responded to the provisional decision arguing that it felt the aftercare it gave Mrs S in the call when she reported the first two payments as a scam was effective. It also argued that Mr and Mrs S and Mrs S's brother all missed a number of red flags and appeared to be blinded by the prospect of obtaining the substantial inheritance, so no checks or warnings it could've carried out would've prevented Mrs S sending the third payment to the scammers.

But, as I mentioned in the provisional decision, the CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific. And I still don't think the information HSBC gave Mrs S in this call was clear enough about the type of contact they could get in future or the checks they could do to check whether any contact was legitimate. And the warning was delivered to Mrs S several days before the next payment was made. So I still don't think it was specific or timely enough to be considered an effective warning under the CRM code in Mr and Mrs S's circumstances.

I also still think HSBC could have been clearer with Mrs S in the call, that she and her brother had been the victims of a scam and that she shouldn't enter into any further communication with anyone relating to the inheritance. And, as I don't think HSBC was clear enough about this, I think it's reasonable that Mr and Mrs S still had some doubts about whether the inheritance was genuine and were subsequently convinced to make another payment by further contact from the scammers. But I also think Mr and Mrs S obviously had some doubts about whether the people they were speaking to were genuine, as they had reported the previous payments to HSBC. So I still think a clearer and more timely warning from HSBC that they were likely the victims of a scam when they were making this third payment would have had a material effect on preventing the scam and I don't think the evidence shows Mr and Mrs S would have made this payment regardless of any action HSBC took.

And so I still think it would be fair to hold HSBC responsible for failing to meet its obligations under the CRM code here.

I therefore still think the conclusions I set out in the provisional decision are correct. I still think HSBC has established that Mr and Mrs S made all three payments without a reasonable basis for belief that they were genuine, but that HSBC failed to meet its obligations in relation to the third payment of £8,000 on 3 March 2023. So I still think it would

be fair for HSBC to refund 50% of the money Mr and Mrs S lost from the third payment of £8,000 on 3 March 2023 here.

### **My final decision**

For the reasons set out above, I uphold this complaint in part and require HSBC UK Bank Plc to:

- Refund Mr and Mrs S 50% of the money they lost from the third payment they made as a result of this scam – totalling £4,000.
- Pay Mr and Mrs S 8% simple interest on this refund, from the date of the payment until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 16 August 2024.

Alan Millward  
**Ombudsman**