

The complaint

Mr L complains that HSBC UK Bank Plc ('HSBC') won't reimburse the money he lost when he fell victim to a scam.

What happened

Mr L says that in February 2023 he saw an advertisement for a car on an online marketplace. There were pictures of the interior and exterior of the car and details of the mileage and MOT expiry date. Mr L expressed an interest and asked why the seller was selling the car. The seller advised Mr L that he was moving abroad so no longer needed the car. He also asked Mr L to contact him by email with any other queries.

The seller explained to Mr L that the car was in storage, and he would arrange for the storage company (I'll call this company 'T') to contact him to arrange payment and delivery. Mr L received an email from T confirming it had the vehicle and could provide him with an inspection report. Mr L received the inspection report and was advised that payment would be made to an escrow account. He would then have five days to test drive the car or have it inspected by a mechanic. Only if Mr L was happy would his funds then be released to the seller. If Mr L wasn't happy with the car, it would be picked up and his funds returned.

T provided Mr L with a contract and on 14 February 2023 he paid £13,000 to it. Mr L received confirmation the payment had been received and was advised the car would be delivered a few days later.

Before the car was due to be delivered Mr L received an email from the storage company which said the vehicle transporter being used to deliver his car had been involved in an accident and sustained structural damage. T told Mr L that his funds would be returned within 72 hours, but this didn't happen, and the seller and T stopped communicating with him. Mr L reported a scam claim to HSBC on 19 February 2022.

Mr L says that the scam storage company is a clone of a genuine company.

HSBC hasn't reimbursed Mr L. It said it provided sufficient warnings and Mr L could have done more to prevent the scam – like viewing the car, or paying by credit or debit card which offer additional protection.

Mr L wasn't happy with HSBC's response and brought a complaint to this service. He says HSBC didn't do enough to protect him when the payment was made.

Our investigation so far

The investigator who considered this complaint recommended that HSBC refund 50% of Mr L's loss. He said that HSBC didn't provide an effective warning under the CRM Code or intervene when an out of character payment was made, but could fairly rely on the reasonable basis for belief exception. This meant Mr L was entitled to a 50% refund under the CRM Code.

HSBC didn't agree with the investigator's findings. In summary, it said that it provided Mr L with an effective and specific warning when he made the payment, which advised Mr L to view the car before making a payment. It said it is required to take reasonable steps to provide effective warnings and this service shouldn't take a 'counsel of perfection' approach based on hindsight. HSBC also noted that the Lending Standards Board, in its September

2022 report on adherence to the CRM Code, viewed links to additional guidance in digital warnings, as provided by HSBC in this case, as a positive step.

Mr L commented that HSBC was negligent in failing to stop the transaction or request that the receiving bank return the funds given that he was the victim of a scam.

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.

When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have reimbursed Mr L under the provisions of the CRM Code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.

There's no dispute here that Mr L was tricked into making the payments. But this isn't enough for him to receive a refund of the money under the CRM Code. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- 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.
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Did Mr L have a reasonable basis for belief?

Taking into account all of the circumstances of this case, including the characteristics of Mr L and the complexity of the scam, I think HSBC can fairly rely on an exception to reimbursement set out in the CRM Code. I'm not satisfied that he had a reasonable basis for believing the payment was for genuine services.

- The price the car was being sold at was too good to be true. The amount Mr L paid was less than half the market value of the car. This price also included delivery, and pick up if the car didn't meet expectations, making it even less likely. This ought reasonably to have caused Mr L to be seriously concerned and to complete additional checks to satisfy himself of the legitimacy of the sale.

I recognise that the seller said he wanted to sell the car because he was moving abroad but don't think such a reduction is plausible.

- The only independent research Mr L says he completed was to look up T at Companies House. There is no company with the exact same name as T on Companies House. A company with a similar name was dissolved in March 2022. And I can't see any reviews of T.
- Mr L was dealing with T and thought T was a storage and transport company. But he was asked to pay the account of an entirely different company. This company also doesn't appear on Companies House, although there are companies with similar names. Paying an alternative company isn't in line with the contract Mr L received either, which said that the account holder was T.
- Mr L didn't have any evidence that the seller owned the car. T provided him with an inspection report and a copy of the passport of the person who was selling the car, but these don't go far enough to show ownership.
- Mr L saw a warning that recommended paying by a different method that offered greater protection but chose not to do so.

Overall, I'm satisfied HSBC can fairly rely on the reasonable basis for belief exception to reimbursement.

Should HSBC have provided effective warnings or intervened?

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

The CRM Code requires that warnings be both specific to the scam risk identified and impactful – to positively affect a customer's decision-making in such a way that the likelihood of an APP scam succeeding is reduced. The CRM Code goes on to say this should include steps to ensure that the customer can reasonably understand the consequences of continuing with an irrevocable payment.

The payment Mr L made on 11 February 2022 was unusual given his previous account activity. HSBC recognised this and provided him with an onscreen warning that said:

"This could be a scam

Buying goods and services

Using your debit or credit card for purchases may offer you more protection against fraud. Only send money if you're sure the goods, service, person or business is genuine.

- *Beware of false websites and reviews. Thoroughly research the seller before making a purchase.*
- *For high value items, for example a car, make sure you physically see it before sending money.*

Visit our fraud centre to find out more.

By choosing 'Continue', you agree you've read our warning and are happy to proceed. You accept we may not be able to recover your money if it's sent to a fraudster's account."

Whilst this warning provides some useful information, I'm not persuaded it meets the CRM Code definition of an 'Effective Warning'.

In respect of the paying by card section, there is no information about what research and checks to make to ensure that the goods, service, person or business is genuine. There is also no information about how to research the seller or spot a fake website or review. And in saying that HSBC 'may not be able to recover your money', the warning doesn't set out the consequences of making an irrevocable payment clearly enough.

I note HSBC's comments about warnings that contain links to additional content and the LSB's position on them. But I'm not persuaded the fraud centre advice in respect of buying goods and services adds much to the main onscreen warning or renders the warning effective.

The fraud centre information refers to offers that are too good to be true or where there's limited availability, being persuaded to send money before receiving goods, and being asked to send funds by bank transfer. There is no information about how to identify something that is too good to be true, it's normal to pay for goods before receiving them, and there was no time limited offer. Whilst there is advice to pay by card, this is covered in the onscreen warning which only says using a card offers more protection, and to only make a transfer if you're sure the goods, services or person are genuine. Mr L had a copy of the seller's passport and thought the sale was genuine. I also refer to the comments I have made above concerning the lack of information about how to check it was a legitimate sale.

Taking everything I have said above into account, I'm satisfied that HSBC should reimburse 50% of Mr L's loss (plus interest as set out below).

I've gone on to consider HSBC's wider obligation to look out for unusual and out of character transactions. Having done so, I consider the transaction was so unusual and out of character that HSBC ought reasonably to have intervened and asked Mr L questions to satisfy itself he wasn't at risk of financial harm. It was of a significantly higher value than any other transaction in the 12 months before it and was to a new payee.

I've gone on to consider what's most likely to have happened if HSBC intervened and asked the kind of questions it ought reasonably to have asked. On balance, I think it's more likely than not that the scam would have been uncovered and Mr L's loss prevented. The circumstances under which Mr L made the payment match a common scam that HSBC, as an expert, would have been well aware of, including a vehicle being sold because the owner was moving abroad, the use of a storage/transport company, payment to an escrow account and the opportunity to be refunded after inspection of the car.

For the same reasons I set out above in respect of Mr L's reasonable basis for belief, I consider a liability split between Mr L and HSBC to be fair.

The relevance of this finding is that as HSBC could have prevented Mr L's loss it should pay interest from the date of payment.

Recovery

I've thought about whether HSBC could have done more to recover Mr L's funds. After being notified of a scam claim, HSBC should report it to the firm that receives its customer's funds promptly. I've seen evidence which shows that HSBC reported the scam to the receiving bank in the expected timescales but that no funds remained. Scammers frequently move funds on quickly to avoid the possibility of them being returned, which is what happened here. I can't hold HSBC liable for this.

Overall, whilst I'm sorry to hear about Mr L's loss, I can't reasonably ask HSBC to provide a full refund.

My final decision

For the reasons stated, I uphold this complaint and require HSBC UK Bank Plc to:

- Pay Mr L £6,500; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of the transaction to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it has taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 February 2025.

Jay Hadfield
Ombudsman