

Complaint

Mr Y is unhappy that HSBC UK Bank Plc hasn't refunded him after he fell victim to a scam.

Background

The facts of this case are well known to both parties and were set out at length in the Investigator's view. I don't intend to repeat them here in that level of detail. The following is just a summary of the key facts.

In June 2018, Mr Y became aware of a business venture being pursued by his sister-in-law. The premise was that she had an account with an upmarket department store that allowed her to buy items as a "personal shopper" with a 10% discount. She said that she had celebrity clients who then paid her full price for the items which allowed her to benefit from the 10% discount. She asked Mr Y for financial support to help her establish the business. In October 2018, she pressured Mr Y into providing further financial support saying that her business was going to collapse if he didn't. She also told him that she expected the business to become more profitable because the personal shopper discount had increased from 10% to 50%. Further down the line, she told Mr Y that she'd secured a major investor but that she needed his temporary financial support to prop up the business and reassured that investor.

It subsequently transpired that Mr Y's sister-in-law was transferring his payments into an account belonging to a limited company. That company had as its sole director a man who, according to Mr Y, is a convicted criminal and fraudster. On several occasions, Mr Y challenged his sister-in-law about what was going on - he received threats as a result, including from her apparent business partner.

He used his HSBC account to make a range of payments between June 2018 and February 2021. Once he determined that he must have fallen victim to a scam, he notified the bank. It didn't agree to refund him. It said that he had a private civil dispute with his sister-in-law, rather than being the victim of fraud. Mr Y was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. Mr Y disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account. It's common ground that Mr Y authorised these payments and so he is presumed liable at first instance.

However, that isn't the end of the story. Good industry practice required that HSBC be on the lookout for account activity or payments that were unusual or out of character to the extent

that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to protect their customer. That might be as simple as providing a written warning as part of the payment process or it might extend to making contact with the customer to establish the circumstances surrounding the payment. In addition to that, HSBC was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). That only covers the final payments made as part of the scam and I'll address that later in this decision.

Scam versus civil dispute

None of the requirements I've described above are relevant if Mr Y wasn't the victim of a scam. I've considered the evidence carefully and I think it shows it's more likely than not that Mr Y was the victim of a scam. In order to come to that finding, I need to consider (a) whether there was a misalignment between the purpose Mr Y had for making the payment and the purpose his sister-in-law had for procuring it and (b) whether that difference was the result of dishonest deception on his sister-in-law's part.

Mr Y has shared with us messages he exchanged with her in which her business proposal was outlined. From what he's told us, it was on the basis of those messages that he started to transfer funds to her. However, I've also seen evidence supplied by the receiving bank (i.e. the bank that operated his sister-in-law's account) and that shows that the funds weren't being used in the way that Mr Y believed they would be. Instead, they were being siphoned off into an account controlled by a different business. On balance, I'm satisfied that this shows that it's more likely than not that those payments were procured from Mr Y based on deception.

The earlier payments

The first payment Mr Y made in connection with the scam ought to have prompted some action on HSBC's part. It was for a significant sum (£10,000) and wasn't in keeping with the way the account had been used historically. However, I've not made a finding on what a proportionate response to that risk would've been. A warning during the payment process might have been enough here, but even if HSBC had gone further by stopping the payment and speaking to Mr Y about it, I'm not persuaded it would've made a difference.

If Mr Y had answered questions from an employee of the bank openly and honestly, I don't think there would've been much cause for concern. He'd likely have told the bank that he was making the payment to support a family member's business venture. I think the bank would've taken some comfort from the wider circumstances. However, even if the bank had been sceptical and questioned him further, Mr Y told us that his sister-in-law told him what to say if any of the payments were questioned. While I accept that this was fraud, I don't think the bank could really have recognised it as such. As a result, while I agree that HSBC should've done more than it did, I'm not persuaded that any shortcoming was a cause of Mr Y's losses here.

The later payments

The later payments were covered by the CRM Code, which was introduced in May 2019. Under the Code, a firm is expected to reimburse customers who fall victim to authorised push payment (APP) scams unless an exception applies. The most relevant exception on the facts of this case says that HSBC isn't required to fully reimburse Mr Y if *"he made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."*

I can understand why Mr Y might have been convinced of the legitimacy of the business venture back in 2018 when he started making payments in the belief that he was supporting it. However, these payments were made in June 2019 and March 2021. By that point, he ought to have recognised that it was unlikely to be a legitimate business venture.

For example, Mr Y says that his sister-in-law had told him that her business was making six-figure profits. She told him that she had a balance on her PayPal account that was over £1 million. It's not clear to me why he didn't wonder why she would pressure him for financial support that, when compared to her apparent wealth, was fairly small. I can also see that, by late 2019, the sister-in-law sent an abusive message to Mr Y's wife defending herself against the suggestion that her business practices were "dodgy" – and so it seems likely that he had a background concern at the possibility that this might not be legitimate after all. Overall, I don't find that he had a reasonable basis to believe that this was a legitimate investment at the material time.

The CRM Code also sets standards for firms. It says that, where HSBC spotted a fraud risk with a particular payment, it needed to provide the customer with an effective warning. There was at least one payment made in 2019 which might have required that HSBC provide an effective warning (a £5,000 transfer on 8 June). However, I'm mindful of the fact that, by that point, Mr Y had made multiple payments to his sister-in-law over several years. HSBC could reasonably take some comfort from the fact that the payment was to an established payee and so it was less likely he was falling victim to a scam. In other words, I don't think HSBC did anything wrong by not providing a warning during the payment process.

However, even if I came to a different conclusion on that point, I don't think it would mean Mr Y's complaint would be upheld. The CRM Code says that, when considering whether a firm has done what it should've done, I need to take into account *"whether compliance with that standard would have had a material effect on preventing the APP scam that took place."*

In other words, if I concluded that HSBC should've provided him with a written warning, would that warning have prevented the scam? It would likely focus on the risks posed by investment scams and would be written with the typical investment scam in mind. Mr Y's scenario wasn't very consistent with the typical investment scam and so, even if HSBC had shown him a warning, I find it very unlikely it would've had any impact on his decision making.

I don't say any of this to downplay the fact that Mr Y has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is to look the actions and inactions of the bank and, while I agree it could've done things differently here, I'm not persuaded that was a cause of his losses.

Final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or

reject my decision before 8 July 2025.

James Kimmitt
Ombudsman