

## The complaint

Mrs C complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of a scam.

## What happened

In July 2021, Mrs C met a man on a dating website. They started exchanging messages, firstly through the dating website and then through an instant messaging service. They spoke most days, including text messages and phone calls. And after a few weeks their relationship had developed to the point where Mrs C thought they were in a romantic relationship. Unfortunately, we now know the man was a scammer.

In August 2021, the man said he had won a valuable work contract abroad. Then, while he was away, he told Mrs C he was having trouble accessing his bank account and sent her his log-in details and asked if she would log-in to his account to make some transfers for him. Mrs C agreed to do this and logged into the man's account, but was only able to make one transfer before the account showed it was blocked.

The man said his bank told him it had blocked his account as he had tried to log-in from different countries. But he said he needed money urgently for a business license, and couldn't complete his work contract without it, so asked Mrs C to send him the money he needed. And Mrs C then sent a payment of £7,000 from an account with a different bank, to the bank details the man gave her.

Over the following months the man then said he needed more money for a variety of reasons, including business insurance and customs tax. And so Mrs C made a number of payments from a number of different accounts, including her HSBC account, to a number of different bank details the man gave her. The man then also said he had met a gold and diamonds trader and was sending some gold and diamonds to Mrs C, but that she would need to pay the delivery fee before they would be delivered. Mrs C then made a number of further payments for what she thought were delivery fees, certification, customs charges and consultant fees. I've set out all the payments Mrs C made from her HSBC account below:

Date	Details	Amount
26 August 2021	To individual 1	£8,000
26 August 2021	To individual 2	£8,000
27 August 2021	To individual 2	£4,000
4 September 2021	To individual 3	£8,000
12 September 2021	To individual 3	£2,500
24 September 2021	To individual 4	£9,000
26 September 2021	To individual 4	£1,000
25 October 2021	To individual 4	£5,000
26 October 2021	To individual 4	£7,000
7 December 2021	To fashion retailer 1	£100
8 December 2021	To fashion retailer 1	£8,500
8 December 2021	To fashion retailer 1	£8,900

8 December 2021	To fashion retailer 1	£4,500
14 December 2021	To fashion retailer 1	£9,500
20 December 2021	To fashion retailer 1	£5,500
30 December 2021	To fashion retailer 1	£1,800
6 January 2022	To fashion retailer 1	£2,000
4 February 2022	To fashion retailer 2	£9,000
4 February 2022	To fashion retailer 2	£4,500
3 March 2022	To cryptocurrency exchange	£2,500
4 March 2022	To cryptocurrency exchange	£2,800
9 March 2022	To cryptocurrency exchange	£390

The scam was uncovered when Mrs C was told she needed to pay more money as the gold and diamonds weren't clean. She became suspicious and contacted the authorities in the country the man told her he was staying in, who confirmed the documents he had sent her were fake. Mrs C then contacted HSBC to report the fraud and asked it to refund the money she had lost.

HSBC investigated but said it felt it had sufficient fraud prevention measures in place. It refunded the first 12 payments Mrs C made as a result of the scam, for a total of £70,000. But it said she could have taken more responsibility and carried out more checks before making the payments. So it didn't agree to refund anything further. Mrs C wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think Mrs C had a reasonable basis for belief when making the payments. But they also didn't think HSBC had met its requirements under the CRM code and thought it should have done more to identify the scam and protect Mrs C. So they thought a fair outcome was for HSBC to refund 50% of the money Mrs C had lost. But as the £70,000 HSBC had already refunded was more than 50% of the money Mrs C had lost, they didn't think it needed to do anything further. Mrs C disagreed with our investigator, so the complaint has been passed to me.

### **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 agree with our investigator that the £70,000 HSBC has already refunded is more than I would ask it to do in these circumstances. So don't think it would be fair to ask it to do anything further. I'll explain why below.

#### *Are the payments covered by the CRM code?*

I've first considered whether the CRM code applies to all the payments Mrs C made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code HSBC has signed up to. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. But it only covers payments where a customer paid funds to another person for what they thought were legitimate purposes, but which were in fact fraudulent.

In this case the first 19 payments Mrs C made, between 26 August 2021 and 4 February 2022, were transferred directly from Mrs C's HSBC account to bank details for other people

she was given by the scammer. And so I think these payments are covered by the CRM code.

But the last three payments Mrs C made, between 3 March 2022 and 9 March 2022, were made to a cryptocurrency exchange account in her own name. I recognise that she only did this under the direction of the scammer. But, as these payments went to an account in her own name, the way the CRM code is written means that I don't think it applies to these three payments.

#### *The payments covered by the CRM code*

As I explained above, the first 19 payments Mrs C made are covered by the CRM code. And this code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mrs C 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.

HSBC has argued that Mrs C could have taken more responsibility and conducted more checks before making the payments, and that she didn't take reasonable steps to check the payments were genuine. And while I appreciate that this was a sophisticated scam, where the scammer built up trust with Mrs C for more than a month before asking for money and sent her a number of photos and other documents to convince her it was genuine, there were also a number of things about what was happening that I think should have caused her significant concern.

I've seen copies of the text messages between Mrs C and the scammer, and they are messaging very frequently and the scammer manipulates Mrs C into thinking they are in a romantic relationship. But they had never met in person and only had one very brief video call in just over a month before the scammer started asking for money. And I think being asked to send thousands of pounds to someone she had never met in person or seen face-to-face should have caused Mrs C significant concern.

The scammer also asked Mrs C to lie to her banks about the reason for making the payments and about who they were going to. And I think being asked to lie to her banks should also have caused Mrs C significant concern.

Mrs C was also initially asked to send money to personal accounts for individuals she doesn't know. But she doesn't appear to have significantly questioned who these people are or how they are connected to the scammer. And the accounts she was sending money to were also in the UK, but she doesn't appear to have significantly questioned how the scammer would be able to get money from these people.

I also think some of the things she was told should have caused Mrs C some concern too. I think it should have been suspicious that a bank would block all access to someone's account for a significant period of time just because they had logged in to their online

banking from different locations. And I think it should have been suspicious that the scammer was saying he was a very successful businessman, but also didn't have the correct license or insurance to operate in the country he was trying to work in.

Mrs C has also said she was initially reluctant to make the payment, so it appears she did have some concerns. And I don't think what she was told should have been enough to overcome those concerns.

So I think HSBC has established that Mrs C made the first payment without a reasonable basis for belief that it was genuine. And I don't think the circumstances for the later payments were less suspicious than for the first, particularly as Mrs C was later asked to send money to UK fashion retailers and I think the returns she was told she would receive on the gold and diamonds were too good to be true. So I don't think Mrs C had a reasonable basis for belief when making any of the payments, and so HSBC doesn't have to refund all of the money she lost as a result of the scam.

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

As the first payment Mrs C made from her HSBC account was for what I consider to be a significant amount of money, I think HSBC should have identified a scam risk, and so should have provided her with an effective warning before she made the payment.

HSBC has sent us copies of a number of different warnings that were shown to Mrs C when she made the payments throughout the scam. But even if none of these warnings were effective and HSBC didn't meet its requirements under the CRM code, Mrs C would then only be entitled to a refund of 50% of the money she lost. And, by refunding £70,000, HSBC has already refunded more than this. So I don't think it would be fair to require HSBC to refund more than it has done already.

#### *The payments not covered by the CRM code*

As I explained above, the last three payments Mrs C made aren't covered by the CRM code. And Mrs C accepts she made these payments herself using her mobile banking. So while I recognise that she didn't intend for the money to ultimately go to scammers, she did authorise these payments. And so the starting position is that she is liable for the payments and HSBC doesn't have to refund them.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in

some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So I've also considered whether HSBC should have identified that Mrs C was potentially at risk of fraud as a result of these payments, or otherwise done more to protect her.

HSBC has said it did identify that Mrs C was potentially at risk of fraud and intervened to carry out further checks with her before allowing several of the payments to go through, first speaking to her on 25 October 2021. It's sent us recordings of the calls it had with her, so I've listened to these to decide whether I think it did enough to protect Mrs C.

It's not for our service to dictate the checks HSBC should do or the questions it should ask. But HSBC should take steps designed to protect its customers from the risk of financial harm. And, in these circumstances and due to the size and number of the payments, I think it would be reasonable to expect those checks to include questions about the purpose of the payments, and then probing follow-up questions to fully understand any potential risks.

The call recordings HSBC has sent us show that, when it did ask Mrs C what the payments were for, she gave incorrect information and said they were to pay for materials for home improvement works she was having done at her properties. So I appreciate that Mrs C mislead HSBC, and that this appears to have been done deliberately in an effort to make sure it allowed the payments to go through.

But at the point HSBC was first asking these questions, Mrs C had sent a number of payments to four different new payees within a month, none of whom she had ever sent money to before. The payments had all gone to personal accounts, which doesn't match what we'd expect to see with payments for materials or home improvements. Mrs C had tried to send money to the same person but with different account details, and couldn't explain why this was. And Mrs C's explanations of exactly what work she was having done, how much it would cost and where she found the people doing the work weren't very detailed or didn't match what we'd expect for building or design work. So I think HSBC should still have had significant concerns after discussing these payments with Mrs C, and should have asked further questions or asked to see some evidence of the work being done before allowing the payments to go through.

I think it's unlikely Mrs C would have been able to provide plausible or convincing answers to further questions, or been able to provide evidence of any of the work being done. So if HSBC had carried out further checks in its call with Mrs C of 25 October 2021 before allowing the payment to go through, as I think it should have, I think the scam would have been uncovered and Mrs C wouldn't have sent any further money to the scammer. And so I don't think she would have lost any of the money she sent to the scammer from 25 October 2021 onwards, including the final three payments that were sent to the cryptocurrency exchange.

I've also thought about whether it would be fair for Mrs C to bear some responsibility for the loss she suffered. And, for similar reasons to the ones I explained above for why I don't think she had a reasonable basis for belief, I think it would be fair for her to do so. I think there were a number of things about what was happening and what she was being told that should have caused her significant concern, including being asked to lie to her banks, the unrealistic returns she was told she would receive on delivery of the gold and diamonds and being asked to send money to a cryptocurrency exchange to make payments for a delivery.

So I think it would be fair for Mrs C and HSBC to share responsibility for the loss she suffered from the last three payments she made. And so I think it would be fair for HSBC to refund 50% of these payments to Mrs C.

Overall then, I think HSBC should refund 50% of the payments covered by the CRM code as I don't think Mrs C had a reasonable basis for belief when making the payments, but HSBC also failed to meet its requirements under the code. And I think HSBC should refund 50% of the payments that aren't covered by the CRM code as I think it should have done more to protect Mrs C, but that it would be fair for her to bear some responsibility too.

But HSBC has already refunded £70,000 of the money she lost to Mrs C. And this is more than the 50% refund I think would be fair. And so I don't think it would be fair to require HSBC to refund anything further.

### *Recovery*

We expect businesses to take reasonable steps to help customers recover any money they have lost as a result of a scam. So I've also considered whether HSBC did enough to try to recover the money Mrs C lost. But HSBC has sent us evidence that it contacted the banks the payments were sent to within a reasonable amount of time, to ask if the money could be returned. Those banks replied to say there were no funds left to return. And, as all of the payments had been made several weeks or months before the scam was reported, I think it's unlikely anything HSBC could reasonably have been expected to do would have been able to recover the money Mrs C lost.

I sympathise with the position Mrs C has found herself in. She has been the victim of a cruel scam and I appreciate how she feels about this case and that my decision will come as a disappointment to her. But, for the reasons I've set out above, I think the refund HSBC has already paid is fair and I don't think it would be fair to require it to do anything further.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 1 September 2023.

Alan Millward

**Ombudsman**