

The complaint

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

What happened

Mrs W says she saw an advert about a property to rent on an online marketplace. She contacted the owner by email to get more information and was told it was a one-bedroom property for a monthly rental of £540 which included bills. The owner said that she was abroad on business and so used a well-known online platform I'll refer to as X to find tenants. Mrs W was advised that she needed to pay a refundable guarantee fee of £540 plus two months' rent (a total of £1,620) and then an agent would meet her at the property where she could sign the agreement and receive the keys. Mrs W was provided with photographs of the property.

Mrs W decided to rent the property and paid £1,620 to the account of an individual who wasn't the owner she had communicated with. After receiving confirmation from the owner that she'd received a notification from X that the payment had been initiated, Mrs W didn't hear anything more from the owner. She realised that she had been scammed and contacted HSBC to report what had happened on 5 April 2022.

HSBC considered Mrs W's claim under the Lending Standards Board Contingent Reimbursement Code (CRM Code) but didn't provide a refund. It said that it had adequate fraud protection measures in place and had provided Mrs W with a warning. This warning advised not to pay by bank transfer. But Mrs W hadn't done enough to satisfy herself the owner was legitimate. In particular, HSBC said Mrs W could have visited X's website and verified the property, paid through X's platform as required by X, questioned why she was being asked to pay a personal account and viewed the property in person before making the payment. HSBC also said it was unable to recover Mrs W's funds from the recipient account.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She considered the complaint under the CRM Code and said that HSBC had done enough but Mrs W ought reasonably to have done more to check that she was dealing with a legitimate landlord.

Mrs W didn't agree with the investigator's findings, so the complaint has been passed to me. She discussed the huge impact of the loss on her health and finances and said:

- £540 for a month's rent was reasonable and she believed the scammer's story that they were looking to rent the property quickly.
- She paid another person believing it to be the owner's partner. She emailed to check this but the scammer has removed the response so she can't now evidence this point.
- She's not computer savvy and trusted the owner.
- The scammers are the criminals here.

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

There's no dispute here that Mrs W was tricked into making the payments. But this isn't enough for her to receive a refund of the money under the CRM Code. The Code places a level of care on Mrs W too.

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. 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.

Taking into account all of the circumstances of this case, including the characteristics of Mrs W and the complexity of the scam, I think the concerns HSBC has raised about the legitimacy of the transactions Mrs W made are enough to support its position that it may rely on an exception to reimbursement in the CRM Code. I don't think she had a reasonable basis for believing the payments were for genuine services or that the person she transacted with was legitimate and will explain why. I should also say that it's the combination of these factors that lead me to believe Mrs W didn't have a reasonable basis for belief and that none of them can be considered alone.

- Mrs W responded to an advert on an online marketplace but was told that the owner was using X to find a tenant as the owner was abroad and didn't have time to meet each prospective tenant. When Mrs W reported the scam, she told HSBC that she had seen the property on X's website but not done anything more. X's website is clear that all communication between hosts and guests and payments should take place through the site. X says,

"What we don't allow

Off platform activity: Hosts and guests must not communicate, share personal contact information, pay, or request payment for a reservation or experience outside of [X's] platform."

Payments for reservations of 28 days or more also work differently to ordinary payments. I consider the arrangements were unusual and ought reasonably to have been questioned by Mrs W – in particular in relation to the payment method.

- HSBC showed Mrs W an on-screen warning when she made the payment. This warning said, *"Caution – this could be a scam"* and went on to say that fraudsters may advertise on social media and online marketplaces and appear legitimate. The warning also said, *"Do not proceed if you are asked to pay by bank transfer rather than using a more secure method"*. Whilst I don't think HSBC needed to provide an effective warning under the CRM Code, I consider the warning ought reasonably to have resonated to some degree with Mrs W and meant that she was alive to the possibility of being scammed.

- The rental price was too good to be true and ought reasonably to have caused Mrs W concern. I have looked at rental prices in the area and note they are considerably higher than £540 a month. I've viewed the photographs of the flat Mrs W thought she was renting and can see that it was in a very good condition. And the owner told Mrs W that all bills were included in the price (gas, water, internet, electricity, television), as was a parking space and a storage unit to put the owner's furniture in if Mrs W wished to use her own. I don't think the rental price was realistic and so Mrs W ought to have taken additional steps before making the payment.
- Mrs W paid an individual who was not the owner she communicated with or related in any way with X. She says she questioned this and was told it was the owner's partner, but I've not seen any evidence of this and don't know why Mrs W would need to pay a third party in this way. And if the owner was going through X, the payment should have gone through X and not to a private individual.

Taking all these points into account, I'm satisfied HSBC acted reasonably in relying on an exception to reimbursement under the CRM Code.

I've also thought about whether HSBC ought to have done more to protect Mrs W from financial harm from fraud. But I don't think the payment request was so unusual and out of character that HSBC should have intervened before the payment left Mrs W's account. For the same reasons, I don't consider HSBC needed to provide an effective warning under the CRM Code.

Finally, I've considered whether HSBC did enough to recover Mrs W's funds once it was made aware of the scam. I've seen evidence to show that when Mrs W reported the scam all her funds had been removed from the receiving account so there was nothing more HSBC could do.

Overall, whilst I'm saddened by what has happened to Mrs W and to hear of the consequences of the scammer's actions, I can't reasonably ask HSBC to refund her losses. I realise this will be extremely disappointing to Mrs W.

My final decision

For the reasons stated above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 August 2023.

Jay Hadfield
Ombudsman