

The complaint

Mr K complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

In October 2022, Mr K was looking to borrow some money and so filled in his details on a loan comparison website. He was then contacted by a loan company, who told him he had been approved for a loan with them. The loan company told Mr K he needed to make some payments upfront before the loan funds would be released to him, so Mr K made two payments to the bank details he was given, as set out below:

Date	Amount
5 October 2022	£347
5 October 2022	£588

When the loan company kept asking for more payments before the loan funds would be released, Mr K became suspicious and reported the payments he had made to HSBC as a scam.

HSBC investigated but didn't agree to refund the money Mr K had lost. It said it had sufficient fraud prevention measures in place, but that Mr K could have done more to make sure the company he was paying was genuine. Mr K wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought there were a number of things about what had happened that should have caused Mr K concern, so they didn't think he had a reasonable basis for belief that the payments he was making were genuine. And so they didn't think HSBC should have to refund the money he had lost. Mr K 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.

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 K 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 K have a reasonable basis for belief when making the payment?

HSBC has said Mr K didn't carry out sufficient checks before making the payment, so it doesn't think he's entitled to a refund under the CRM code. And while I appreciate he has been the victim of a cruel scam, I do think there were a number of things about what was happening and what he was being told that should have caused Mr K significant concern.

Mr K was contacted after entering his details on a loan comparison website. But he doesn't appear to have done any checks into who this loan company was or whether the people contacting him were actually connected to the loan company. And as he was meant to be borrowing a significant amount of money from them, I think it's reasonable to expect him to have done some checks into this.

The correspondence Mr K received from the loan company and the loan agreement he was sent to sign both contain a number of grammatical and formatting errors – which I think should have caused Mr K some concern.

The loan company said Mr K had to make a payment upfront before the loan could be released to him, and they told him he had to pay an additional fee because he didn't have a guarantor. But this isn't how a loan would typically work, so I think this should also have caused him some concern.

Mr K was also asked to pay the upfront fees into a personal account, rather than into a business account. And the name of the account he was told to pay didn't match any of the people he'd been speaking to, or match the name of the director given on the government register of limited companies either. And I think these things should have caused him significant concern.

The emails Mr K received from the loan company also asked him to ignore any pop-ups that appeared when he tried to make the payment and to not mention anything extra on top of what they'd told him to enter. And HSBC's evidence shows Mr K was shown a warning when making the payments which said that if someone had told him to mislead HSBC about the reason for the payment then it is a scam. So I think this should also have caused him significant concern.

I sympathise with the position Mr K has found himself in. But I think there were a number of things here which should have caused him concern, and I don't think he did enough to satisfy those concerns before making the payments. So I think HSBC has established that he 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 K all the money he lost.

Did HSBC meet its obligations under the CRM code?

Even though I don't think Mr K had a reasonable basis for belief when he made the payments, he may still be entitled to a refund of some of the money he 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 these payments weren't for what I'd consider to be particularly large amounts of money, and there had been other payments for similar and larger amounts both into and out of Mr K's account in the previous months. The payments also didn't leave the balance of Mr K's account at a particularly unusual level. And while I appreciate Mr K says these payments are significant amounts of money to him, in comparison to the previous activity on his account I don't think they will have looked unusual or out of character to HSBC.

So I wouldn't have expected HSBC to have identified a scam risk as a result of these payments. And so I don't think HSBC failed to meet its obligations under the CRM code or that it should be required to refund any of the money Mr K lost on that basis.

Did HSBC do enough to recover the money Mr K 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.

But the information we've received from the bank the payments were sent to shows the money was removed before Mr K told HSBC about the scam. So I don't think anything we would reasonably have expected HSBC to have done could have recovered the money Mr K lost.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 November 2023.

Alan Millward
Ombudsman