

## **The complaint**

Mr A complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost as a result.

Mr A is represented by Mrs A, his mum.

## **What happened**

Mr A was befriended online and was persuaded to send money to individuals pretending to be his friend.

Between 27 November 2022 and 11 May 2023, Mr A sent payments totalling £4,561.45.

£125.95 of these payments were made by faster payment, with the remainder being made by debit card to a cash app. The scam was discovered when Mr A's bank card stopped working and he and his mother visited an HSBC branch.

A complaint was made to HSBC. It refunded Mr A £125.95 under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code but declined to refund any of the other transactions.

Mr A then brought his complaint to this Service.

HSBC responded to our request for its file and said that it would like to offer Mr and Mrs A £100 each, on top of the £75 it had already paid Mr A in recognition of the errors and delays it caused.

Our Investigator reached out to HSBC, to ask if it would consider refunded any of the remaining £4,435.50, in light of Mr A's vulnerabilities, but it declined to do so.

Our Investigator then assessed the complaint but didn't think that HSBC needed to do any more than it had offered to do. They explained that the remaining payments were not covered by the CRM code – and that while Mr A was vulnerable, the payments he made wouldn't have seemed unusual to HSBC, so there was nothing it could have done to uncover the scam.

Mr A asked for a final decision, 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 have decided that HSBC does not need to do any more than it has already offered to do. I know this will be very disappointing for Mr A and his representative, so I will

explain why.

HSBC assessed Mr A's complaint under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code and refunded him £125.95. However, it declined to refund the remaining payments, as the CRM code does not apply to payments made by card, or to an account held in the same name. Both these exclusions apply to the remainder of the payments Mr A made.

As the CRM code doesn't apply to all of Mr A's transactions, I need to assess them under different rules, which I have done below.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr A authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, HSBC should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider 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.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr A when he authorised payment from his account or whether it could and should have done more before processing them.

Looking at the payments in question, I can't say that any of the payments Mr A made were sufficiently unusual or suspicious enough for HSBC to have had concerns that he may have been at risk of financial harm or indicate that he may be falling victim to a scam.

The payments took place over a period of almost five months – with the highest amount being £500 on 7 March 2023. The majority of the payments were £100 or less. As I have

explained above, it is not reasonable to expect a bank to intervene in all payments, and while I understand that in total, Mr A has lost a lot of money to scammers, I can't say that HSBC could have been aware that this was what was happening at the time.

Mrs A has provided information to this service to show that Mr A was a vulnerable individual and considers the payments – in particular those over £100 – should have stuck out to HSBC. She says that as Mr A had not made a deposit into his account since 2021 and had never paid into a Cash App before that this should also have caused HSBC concern. But I am afraid I can't agree. I do understand that these payments may seem large to Mr A and Mrs A, but a significant number of transactions a day and cannot be expected to monitor all accounts in minute detail. In this case, I just don't think the value, frequency or pattern of the payments should have appeared suspicious to HSBC.

In saying this, I have taken into account the information Mrs A has provided on behalf of her son and agree that Mr A seems to have been particularly susceptible to this type of cruel and manipulative scam, but I am unable to say that this makes a difference to the outcome of this complaint, although I know this will be upsetting for Mr and Mrs A.

I say this because HSBC wasn't aware of Mr A's vulnerabilities when he made the payments – and as I don't think that the payments were at a level that required any intervention by HSBC, it would not have become aware that Mr A may have been more susceptible to being taken advantage of by unscrupulous individuals. Our Investigator has already asked HSBC if it would refund Mr A as a gesture of goodwill – but it declined to do so – which it is entitled to do. So unfortunately, I am unable to compel it to do so.

I have considered if HSBC could have done anything to try and recover the funds lost by Mr A, but I don't think there was anything it could have done to do so. The payments were made to a cash app in Mr A's name and moved to the scammer on instruction – so there would be nothing available for it to attempt to recover.

I also think that the offer of £200 HSBC has made to Mr A and Mrs A is fair, given the circumstances – it has acknowledged that it caused delays and made some errors. I recognise that Mrs A doesn't feel that this goes far enough given the delays HSBC has caused, especially because of Mr A's vulnerabilities, but even when taking this into account, I think that the amount offered is in line with what I would usually award in such circumstances.

I am very sorry for the situation Mr A now finds himself in – I know that it took him a long time to save the money that has been lost, and he has been cruelly and unfairly targeted by malicious individuals who have taken advantage of him, which has understandably affected his confidence. But this is the fault of the scammers – not HSBC. And I can't ask it to refund him when I don't think it did anything wrong.

### **Putting things right**

HSBC UK Bank Plc should pay Mr A and Mrs A the further £200 it has offered, if it has not already done so.

### **My final decision**

I think the offer HSBC UK Bank Plc has made to Mr A is fair, and I don't direct it to make any further payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 October 2024.

Claire Pugh  
**Ombudsman**