

The complaint

Mr O complains that HSBC UK Bank Plc ('HSBC') won't refund his legal fees and costs following a scam claim.

What happened

Between 16 and 19 October 2020 Mr O made three payments of £10,000 for gold that he did not receive. He contacted HSBC to make a claim in March 2021, but HSBC didn't agree to reimburse any of his lost funds. It said the beneficiary bank had investigated but found no evidence of fraudulent activity. HSBC advised Mr O to contact the seller.

Mr O says that he started court proceedings which cost him a lot of money. The case didn't proceed because the court said Mr O didn't pay court fees in time.

In October 2022 Mr O complained to HSBC through a legal representative. HSBC considered Mr O's complaint and said that when Mr O raised a scam claim in March 2021 it followed the correct process and contacted the bank that received his funds. But at that stage the receiving bank said there was no evidence of fraud in respect of the payment its customer received so there was nothing more HSBC could do. HSBC then received a complaint from Mr O's legal representative in October 2022. By this time, it said changes had been made to the CRM guide which meant that after a review HSBC was able to reimburse Mr O's loss in full. HSBC said it hadn't done anything wrong in March 2021 and wouldn't pay Mr O's legal fees.

Mr O was unhappy with HSBC's response and brought a complaint to this service.

Our investigation so far

The investigator who considered Mr O's complaint recommended that HSBC pay Mr O interest at the rate of 8% simple because Mr O had been deprived of the funds but did not make any other award. In summary, she said:

- There was no record of a formal complaint by Mr O to HSBC in 2021 and if Mr O had complained the investigator said she would expect Mr O to follow it up and then be referred to this service.
- Mr O could have brought a complaint to this service for free. There is a lot of information available about the service we provide, including on HSBC's website.
- Mr O chose to instruct solicitors and entered into an agreement with them.
- In respect of Mr O's other legal costs, the investigator said that Mr O chose to take this action when an informal option was available.

Mr O didn't agree with the investigator's findings, so his complaint has been passed to me to consider. In summary, he said that he's incurred considerable costs in trying to get his money back that he wouldn't have needed to pay if HSBC refunded him when he first claimed. Mr O says he is seeking around £19,000 to cover his legal representative's fees, court fees when he took the gold company to court, his time in seeking to recover his lost £30,000 and parking costs when HSBC challenged nearly all his transactions after the scam – saying they could be fraudulent. Mr O also said the cost of gold has also gone up, but he hasn't been able to benefit from this.

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.

I'd like to clarify with Mr O that HSBC isn't automatically responsible for the fact he paid money by bank transfer for gold he didn't receive. Paying by faster payment is like paying by cash in that the funds enter the recipient account immediately and can only be recovered if a scam is reported and funds remain in the account. It isn't the case that because he didn't receive the goods his bank is liable.

At the time Mr O made the payments in 2020 HSBC had signed up to the CRM Code. The CRM Code isn't a general protection for consumers and does not cover situations where a customer has paid a legitimate supplier for something they haven't received. This amounts to a breach of contract which is a civil issue. The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...where

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

When Mr O reported what had happened to HSBC in March 2021 HSBC contacted the bank that had received his funds to try to recover the lost funds. The receiving bank gathered evidence from its customer and deemed this to be a civil dispute between Mr O and the supplier of gold. In the circumstances, HSBC acted reasonably in determining that the CRM Code didn't apply and there was nothing more it could do to recover Mr O's funds. If Mr O disagreed, he could have contacted HSBC and provided more information to show he was the victim of a scam.

At the time the payments were made HSBC also had an obligation to look out for unusual and out of character payments. I consider HSBC ought reasonably to have had concerns about the payments and asked Mr O some questions to satisfy itself he wasn't at risk of being defrauded. But I think if HSBC had done so there wouldn't have been any concerns and the transactions would have been processed. This was because Mr O says he saw a lot of positive reviews and received documentation. So, I'm not satisfied that if HSBC had intervened the scam would have been uncovered.

When Mr O complained to HSBC in 2022 HSBC again contacted the receiving bank, but this time was advised that no funds remained. This meant that HSBC could consider Mr O's complaint under the CRM Code. After assessing Mr O's claim under the CRM Code HSBC provided a full refund but hasn't paid interest.

It's still unclear to me whether this is a civil dispute or a scam. I have asked Mr O for information that would help me to decide this point, but he hasn't replied. By refunding Mr O under the CRM Code, HSBC has reached the conclusion that Mr O is the victim of a scam, so Mr O has been deprived of funds in circumstances that HSBC has accepted meet the definition of an APP scam in the CRM Code. In these circumstances, this service awards interest at the rate of 8% simple per year from the date a firm made its decision not to reimburse to the date of settlement.

I turn now to Mr O's costs. It might help if I explain that even if I was satisfied Mr O was the victim of a scam and HSBC did something wrong when he first contacted it in March 2021, I wouldn't be recommending that HSBC refund the fee he has paid to his legal representative or his legal costs in bringing a claim to court. Mr O could have raised a complaint directly with HSBC and not incurred any fees, but HSBC has no record of a formal complaint being

raised. The complaints procedure could have been provided by staff but was also available on HSBC's website.

Also, the 'Damages Based Agreement' Mr O had with the legal representative he instructed meant that he was charged a 25% success fee (plus VAT), not a fee based on the amount of work they did. This is the risk taken by all parties in this type of agreement and it is not for HSBC to meet this fee. If Mr O is unhappy with the amount he was charged by his representative or with the work that was done this is a separate matter that doesn't form part of this complaint against HSBC.

Given that I consider HSBC acted reasonably when Mr O brought his claim in March 2021, I am not awarding any costs or expenses as claimed by Mr O.

Mr O said in response to the view that he wished to add additional costs of £1,000 to cover parking fees when he had to attend branch when subsequent payments were blocked as potentially fraudulent by HSBC. This wasn't part of the complaint that was originally brought to this service, so I won't consider it here. Mr O may choose to raise a separate complaint with HSBC about this, if he hasn't already.

My final decision

I require HSBC UK Bank Plc to:

- Pay interest on the award of £30,000 from the date HSBC declined his claim in March 2021 to the date of settlement.

If HSBC UK Bank Plc considers that it is required by HM Revenue & Customs to deduct income tax from the interest award it should tell Mr O how much it has taken off. It should also give Mr O a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 November 2023.

Jay Hadfield
Ombudsman