

The complaint

Mr H complains that HSBC UK Bank Plc (“HSBC”) won’t refund him money, which he believes he lost as the result of an Authorised Push Payment (“APP”) scam. Alongside this, Mr H also complains about how HSBC handled his complaint.

What happened

The background to this complaint is well known to both parties, so I won’t repeat it in detail here, but in summary I understand it to be as follows.

In or around July 2023, Mr H was looking for accommodation to rent. He came across a letting agency, who I’ll refer to as ‘R’, through a well-known social media platform. Mr H saw a property that interested him and, after seeing a video of it, agreed to pay a holding deposit of £200 – which he sent on 20 July 2023, from his HSBC account.

Following the payment Mr H has said he received a contract to sign. However, he’s explained that he had subsequently changed his mind about renting the property, having found a different property that he preferred. Mr H contacted R to request the refund of his deposit. He was told the matter would be escalated to a manager but didn’t receive a response despite numerous attempts.

Mr H raised the matter with HSBC, but it declined to refund him the money he’d paid. In summary, this was because it said there was insufficient evidence to suggest the payment had been made as part of a fraud; rather it appeared Mr H had made his payment to a legitimate company and so this would be classed as a civil dispute. However, HSBC did recognise that it could have handled Mr H’s enquiry better and in recognition of this paid £100 compensation into his account.

Unhappy with HSBC’s response, Mr H brought his complaint to this service. One of our Investigator’s looked into things, but didn’t think the complaint should be upheld. In summary, this was because they agreed with HSBC’s assessment that Mr H wasn’t the victim of a fraud and that this was a civil dispute between him and the letting agency. It was also our Investigator’s view that the compensation HSBC had paid, for £100, regarding the service was reasonable.

Mr H disagreed with our Investigator’s view. In summary, he thought that the response from HSBC was inadequate and that it needed to pay full compensation. Mr H added that HSBC had given wrong information and advice around how to proceed and resolve the concerns in his case and he didn’t think HSBC had dealt with the case in a timely manner.

As agreement couldn’t be reached, the complaint has been passed to me for a final decision.

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'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The starting position in law is that Mr H will generally be considered liable for authorised payments. It's accepted that he authorised the payment in dispute and so he is liable for it in the first instance. However, HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Under that Code, firms are expected to reimburse customers who fall victim to fraud, subject to a number of exceptions.

However, the CRM code is only relevant if I'm persuaded Mr H did fall victim to a fraud. The Code specifically excludes certain types of dispute. It says:

"This Code does not apply to ... private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

So, taking into consideration the above, I must first decide whether Mr H has likely been the victim of fraud or not. And whether HSBC acted fairly, when concluding what had happened in the circumstances of this case amounted to a civil dispute and not an APP scam. Having thought very carefully about HSBC's actions, I think it did act fairly in reaching this conclusion. I do appreciate how disappointing this will be for Mr H, and I don't underestimate his strength of feeling, but I don't think I can fairly say HSBC should reimburse him. I'll explain why.

I firstly need to consider the purpose of the payment and whether Mr H thought this purpose was legitimate. I'm satisfied he did; he's explained that he believed the payment he was making was a holding deposit for a property. Then I need to consider the purpose the recipient (R) had in mind, at the time of the payment, and whether this was broadly in line with what Mr H understood to be the purpose of the payment.

In order for me to be persuaded Mr H has likely fallen victim to a fraud, I'd need to be satisfied the purpose of R receiving Mr H's payment differed from Mr H's and that it intended, from the outset, to deceive him and likely not provide the services he'd been asked to pay for. Having considered the evidence from both parties, I'm not persuaded this was the case. I say this because;

- Having looked at online reviews for R it appears, from what I've seen, that it does provide property related services. And while reviews are mixed, this doesn't in and of itself mean that it was operating fraudulently and supports that R's intended purpose was to provide what was paid for.
- R has been registered with Companies House for a number of years and still appears to be trading. Furthermore, the bank statements associated with R indicate that it was running legitimately.
- In the circumstances of this case, Mr H was not contacted out of the blue, as can sometimes be the case with scams. Rather he contacted R having seen an advert

and engaged into discussion with them. And while I appreciate Mr H didn't receive a refund, he was, at least for a time, still able to contact R after he'd made the payment – which is not typically the case when a third party sets out to defraud.

- I'm also mindful here that R did send Mr H contracts to sign, but it was Mr H who decided not to proceed. It is not typical behaviour for a fraudster to send paperwork/contracts after they have obtained the funds they have set out to steal. Rather, a fraudster would commonly drop contact with a victim soon after their goal was achieved.
- I can't know for sure what the intentions of R were, in terms of not refunding the deposit to Mr H. But, I am mindful there are also other explanations and, in the individual circumstances of this case, the evidence doesn't lead me to conclude that it's more likely than not that R set out with the intent to scam. It's equally likely that R considered the deposit to be non-refundable, which can often, but of course not always, be the case.

All things considered, the evidence indicates that it's more likely than not that this is a civil matter, rather than an act where R intended to defraud Mr H. As it's more likely than not that Mr H hasn't been a victim of fraud, it wouldn't be fair or reasonable to expect the bank to reimburse his loss under any of the considerations I've given above. In such circumstances, Mr H may have a civil claim for damages from breach of contract against R, but it wouldn't entitle him to have his losses reimbursed by the bank under the CRM Code.

Finally, I'm mindful that Mr H considers that HSBC's response was inadequate, that it didn't think it dealt with his complaint in a timely manner and that the compensation it has already paid of £100 doesn't go far enough. I've thought about this carefully and I'm satisfied the compensation HSBC has already paid is fair.

HSBC acknowledged that one of its agents gave Mr H inaccurate information around tracing his payment when he raised the matter with it. While HSBC may have made an error here, it doesn't automatically follow that Mr H is entitled to a full refund of the money he lost. From the evidence I've seen, Mr H received a final response from HSBC within 10 days of him raising the matter, and I can't see he raised any concerns with it at the time regarding the timeliness of its response. Overall, I think the compensation HSBC has already paid is proportionate in the circumstances and in line with what I would fairly and reasonably have expected it to pay. It follows that I won't be asking it to pay any more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 July 2024.

Stephen Wise
Ombudsman