

The complaint

G (a limited company) complains that HSBC UK Bank Plc did not do enough to prevent an account held with it from being used for fraud. G would like HSBC to refund the money lost to the fraud.

G is represented in this complaint by a claims management company, for simplicity I will refer to G throughout this decision even when referencing what it's representatives have said on its behalf.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of what happened here.

G had seen various social media posts relating to an individual who was presenting himself as a successful property investor. Having spoken with this person, and with other investors, G decided to invest as well, in a company this person ran which I'll call S.

The agreement was that G would invest funds so that S could rent properties from landlords and then re-list them at a higher price on various short-term rental websites. G made two payments to S for this investment, totalling £17,200. These payments were made from G's bank account with another institution to S's account held at HSBC.

Over the next year or so G received periodic payments from S as returns on its investment, but G says these returns were often not on schedule and that it had to chase S. In total, G received returns of over £10,000 from S. But G says that it did not receive any breakdown of what these return payments consisted of and, ultimately, G stopped receiving any returns from S, and S stopped responding to G's requests for contact.

G contacted HSBC to complain that S had been acting fraudulently. G wanted HSBC to take responsibility for allowing S's account to be used for fraud, and to refund the money G had lost. At this stage HSBC told G it felt this issue was a civil dispute between G and S, and so it would not be refunding G's loss.

Unhappy with HSBC's response, G brought its complaint to this service and one of our investigators looked into things. But they agreed with HSBC that this was most likely a civil dispute, and so G was not entitled to a refund of the payments made. G remained unhappy, it has referred to other investors who also consider S to be a scam, and maintains that HSBC should bear some responsibility for G's loss.

So, as the case could not be resolved informally, it's been passed to me for a 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.

Having done so and having thought very carefully about HSBC's actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for G but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold HSBC liable for its loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that G feels that they have been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which HSBC has signed up to and which was in force at the time G made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether HSBC therefore ought to reimburse G under the provisions of the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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."

HSBC is of the opinion that G's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that S set out with an intent to defraud G from the outset. It seems more likely to me that this is a dispute about a failed investment.

I say this for the following reasons:

- the evidence I have seen from S's HSBC account does suggest that it was operating as one would expect it to if it was running a property business. There were payments in and out of the account which were clearly associated with property rentals.
- S has maintained a presence on Companies House from its date of incorporation, including submitting the required paperwork and accounts. These are not the actions I would necessarily expect from a scammer.
- G and S maintained regular detailed communications over the year after G invested, including details of the investment not going as planned.
- G received more than half its investment back, over an extended period of time, S's account statements do not suggest that this was due to S running a 'Ponzi scheme' as G claims.

Overall, I must make my decision based on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely that S was attempting to operate as a legitimate business at the time and that other factors ultimately meant the agreed investment did not work out. I haven't seen evidence to persuade me that S set out from the beginning with the intent to defraud G. I am aware of the other cases G's representative has referred to us from others who invested in S, but nothing I have seen

about those other cases leads me to think that G has been the victim of a scam here as per the definition set out in the CRM Code.

I appreciate G won't agree, but from HSBC's point of view this situation doesn't display the hallmarks most typically associated with a scam. This is not to say that there is no issue at all between G and S. Clearly there is. But this type of dispute isn't something that the CRM Code covers (or we as an organisation are set up to deal with).

So, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold HSBC responsible for the money G has lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 25 July 2024.

Sophie Mitchell
Ombudsman