

The complaint

Mr P complains that HSBC UK Bank Plc will not refund the money he lost to what he believes was a scam.

What happened

Mr P was looking to book two holidays. He had an existing relationship with an independent travel agent who had previously organised various holidays for him and for other people he knew. I'll call this travel agent Mr L. Mr P made two payments for his holidays. A payment for £13,799.52 to Mr L's business account in September 2022 and a payment for £5,000 to Mr L's personal account in December 2022.

In June 2023 Mr P received an email from Mr L stating that his business had ceased trading and that all booked holidays would be cancelled. Mr P then became aware that the police were investigating Mr L and his business for allegations of fraud – this investigation is still ongoing.

Mr P contacted HSBC to complain that Mr L had been acting fraudulently, and to ask it to refund the money he had lost. Ultimately though, HSBC felt this issue was a civil dispute between Mr P and Mr L, and so did not refund Mr P's loss.

Unhappy with HSBC's response, Mr P brought his complaint to this service, in particular he feels that HSBC has treated him differently to how it has treated other individuals who also lost money to Mr L – some of whom have received a refund of their loss from HSBC. One of our investigators looked into things, but they agreed with HSBC that this was most likely a civil dispute, and so Mr P was not entitled to a refund of the payments made. Mr P remained unhappy, 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 Mr P but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold HSBC liable for his 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 why Mr P feels that he has 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 Mr P 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 Mr P 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 Mr P'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 Mr L set out with an intent to defraud Mr P from the outset.

I say this as the evidence I have seen from Mr L's personal and business accounts shows that he was using those accounts in the way one might expect if he was running a travel agency business. There were payments out of the accounts which were clearly associated with paying for hotels, flights, and other services associated with travel.

I acknowledge that Mr P paid for his bookings in full in advance in order to get discounts, he feels that as the hotels and flights were not paid for Mr L was therefore being dishonest about the reason for the payment. But I don't think I can fairly say that is the case. Mr L not using Mr P's funds to pay the suppliers immediately – as Mr P believed he would - does not, in my mind, prove that he was not intending to use them to pay the suppliers at some stage. So, I don't think I can fairly say Mr L was dishonest about the ultimate reason for the payments regardless of the specific details of the payment schedule.

I am also aware that Mr L did not officially register his business as a limited company until after the payments Mr P made. But running a business as a sole trader, and then choosing to use the same name when converting to a limited company, does not mean that sole trader was operating fraudulently or that the account they held as a sole trader was not legitimate.

I also acknowledge that the police are considering what has happened here, but at this stage no clear information has been made public as to what exactly Mr L may be charged with, or what period of time or aspect of his business that might relate to. So, I don't think the involvement of the police is enough to say for certain that Mr L was acting fraudulently at the time that Mr P made the payments that are the subject of this complaint.

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 Mr L was attempting to operate as a legitimate business at the time and that other factors ultimately meant the holidays Mr P paid for were not provided. I haven't seen clear evidence to persuade me that Mr L set out from the beginning with the intent to defraud Mr P.

With this in mind, I'm satisfied that the travel agent does appear to have been operating a legitimate business at the time, I therefore think it is fair to consider them a legitimate supplier. And it's clear from what has happened that Mr P paid Mr L for services that have

not been provided, so I'm satisfied that this situation meets the definition of a civil dispute as set out in the CRM code.

I appreciate Mr P 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 Mr P and Mr L, clearly there is. And the information Mr P has sent us does suggest that Mr L wasn't always acting professionally, but that does not mean that this was a scam, rather than a case of poor business practices. But it is worth noting that, if new material information comes to light at a later date, such as the outcome of the police investigation into Mr L's business, then Mr P may be able to bring a new complaint to HSBC.

I also acknowledge that Mr P is aware of other individuals who lost money to Mr L who have had their loss refunded by HSBC. But without knowledge of the full circumstances behind those refunds, I can't say with any certainty why those people received a different outcome to Mr P. And, in any case, my role is to look at the circumstances of Mr P's complaint and to determine whether HSBC has treated him fairly. And I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that HSBC was fair to consider this is most likely a civil dispute. 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 lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 August 2024.

Sophie Mitchell
Ombudsman