

The complaint

Mrs Q complains that HSBC UK Bank Plc will not refund the money she lost to what she believes was a scam.

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.

Mrs Q was looking to book a holiday for her daughter. She had an existing relationship with an independent travel agent who had previously organised various holidays for her and for other people she knew. I'll call this travel agent Mr L. In November 2022 Mrs Q made a payment for £2,854.20 to Mr L's personal account to pay for this holiday. Mrs Q also made other payments to Mr L using her credit card, but those have already been refunded to her under the chargeback scheme.

In June 2023 Mrs Q was told that Mr L and his business had ceased trading, and that all booked holidays would be cancelled. Mrs Q then became aware that the police were investigating Mr L and his business for allegations of fraud – this investigation is still ongoing.

Mrs Q contacted HSBC to complain that Mr L had been acting fraudulently, and to ask it to refund the money she had lost. Initially, HSBC considered Mrs Q's claim under the Contingent Reimbursement Model Code (the CRM Code) but did not consider that it was liable for her loss. It said it had provided her with effective warnings and that she had not done enough to protect herself from being scammed. However, HSBC has since said that, in light of the active police investigation, it does not consider that what happened to Mrs Q meets the definition of an APP scam (as required for the payment she made to be covered by the CRM Code).

Mrs Q brought her complaint to this service, and one of our investigators looked into things. But they concluded that this was most likely a civil dispute, and so Mrs Q was not entitled to a refund of the payment she had made under the CRM Code. Mrs Q did not agree, 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 Mrs Q but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold HSBC liable for her 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 Mrs Q feels that she 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 Mrs Q made this payment.

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 Mrs Q 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 Mrs Q'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 Mrs Q from the outset.

I say this as the evidence I have seen from Mr L's 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 Mrs Q paid for her booking in full in advance in order to get discounts, and that the hotels and flights she had requested were not paid for. The suggestion is that 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 Mrs Q's funds to pay the suppliers immediately 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 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 alone is enough to say for certain that Mr L was acting fraudulently at the time that Mrs Q made the payment that is 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 holiday Mrs Q paid for was not provided. I haven't seen clear evidence to persuade me that Mr L set out from the beginning with the intent to defraud Mrs Q.

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 Mrs Q 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 Mrs Q 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 Mrs Q and Mr L, clearly there is. And the information Mrs Q 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. 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 Mrs Q may be able to bring a new complaint to HSBC. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is most likely a civil dispute. So, I do not consider that the payment in dispute here is 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 Mrs Q to accept or reject my decision before 22 August 2024.

Sophie Mitchell
Ombudsman