

The complaint

Mr A complains that HSBC UK Bank Plc (“HSBC”) won’t refund the money he lost to what he now believes was a scam.

What happened

In November 2023 Mr A made payments to an organisation (I will refer to as O in this decision) to enrol on a three-year course. He found the company by searching on the internet. He says he saw there was a website, social media pages and the reviews about O were positive.

The course started on 2 January 2024 and Mr A attended some classes, but Mr A found out O had gone into administration on 19 March 2024.

Mr A made the following payments to O:

Date	Method	Amount
27 November 2023	Debit card	£250
29 November 2023	Mobile banking bill payment	£6,900

He raised a dispute on the card payment and that was refunded. So, this decision is about the bill payment made to O on 29 November 2023.

HSBC said this was a civil dispute between Mr A and O but offered Mr A £100 as it felt Mr A had spent a lot more time on the phone reporting his dispute than he needed to.

Our investigator also felt this was a civil dispute and consequently it wasn’t covered by the CRM (Contingent Reimbursement Model) Code. Mr A did not accept the view or HSBC’s offer. He said:

- O knew it was going to file for administration as one of the directors resigned and started a new company with almost the exact same name and address.
- O was taking payments up to a week before the actual liquidation date of 19 March 2023. This is proof O was promising a service they couldn’t facilitate and yet took payments.
- Mr A now feels he was coerced by salesman at O into paying by bank transfer to make it difficult to claim it back.

As the case could not be resolved informally, it has 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.

When considering what is 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 relevant time.

It's clear that Mr A feels strongly that O has tricked him. From his perspective, O took money for a course and knew it couldn't provide what was agreed. But I don't have the power to decide any dispute between Mr A and O. My role is limited to looking at whether HSBC has treated Mr A fairly.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams. HSBC was a signatory to the CRM Code at the time the payment in question in this case was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meet the CRM Code's definition of a scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

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

"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".

I've considered the first part of the definition, and having done so I'm satisfied that Mr A paid the account he was intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr A's transaction.

I've gone on to consider if Mr A's intended purpose for the payment was legitimate, whether the intended purposes he and the company (O) he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of O.

From what I've seen and what Mr A has told us, I'm satisfied Mr A made the payment with the intention of attending a course run by O. He thought he would attend three years of classes and receive a qualification at the end of it.

I've considered whether there is convincing evidence to demonstrate that the true purpose of O's course was significantly different to this, and so whether this was a scam or genuine company.

It seems to me that O was, more likely than not, operating as a legitimate organisation. O was registered as a limited company on Companies House and had been incorporated since 2013. I understand it had four training centres nationwide, and it appears to have operated successfully for a number of years. Mr A did attend some classes before O went into liquidation.

Although O has gone into liquidation and some students didn't receive what they paid for, or they were unable to finish the courses they had paid for, this doesn't evidence O intended to defraud when taking payments or that the purpose for the payments was anything other than agreed. I haven't seen any evidence that O didn't use the money in the way it said it would and so I can't exclude the possibility that O entered the agreement in good faith, intending to fulfil the agreement and then was unable or unwilling to do so for some reason. The evidence doesn't lead me to conclude it's more likely (than these alternative possibilities) that O intended to steal Mr A's money from the outset and never had any intention of fulfilling the arrangement in full or in part.

Whilst I note Mr A has mentioned one of O's directors set up other similar companies, this does not show that in relation to the transactions carried out in this particular case that there was a fraudulent intent.

This is not to say that there is no issue at all between Mr A and O. Clearly there is. I realise my final decision will be a significant disappointment to Mr A. I know this wasn't the answer he was hoping for. But my role is limited to determining whether HSBC bears any responsibility for his financial loss. I haven't seen convincing evidence that this came about as the result of an APP scam. It follows I can't say the bank ought reasonably to be held liable for his loss.

In addition, HSBC doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise HSBC for not doing more when Mr A made the payment.

HSBC offered £100 as it felt Mr A had spent a lot more time on the phone reporting his dispute than he needed to. I can see Mr A made a dozen calls over a two-day period. So, I can see this would have caused Mr A some degree of distress and inconvenience. Given the number of calls over a two-day period, I find the offer made by HSBC is fair and reasonable.

My final decision

HSBC UK Bank Plc has already made an offer to pay Mr A £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my final decision is that HSBC UK Bank Plc should pay Mr A £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 May 2025.

Kathryn Milne

Ombudsman