

The complaint

Miss H is unhappy that HSBC UK Bank Plc ('HSBC') has decided not to refund the money she lost, to what she believed was an Authorised Push Payment ('APP') scam.

What happened

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

Miss H had come across a children's entertainer, whom I'll call 'K', through a well-known online social media website and whom she had seen at an event space at a lodge / farm where K handed out business cards. Miss H subsequently booked K to attend a party for her son's birthday. Miss H has advised that K had regularly been hired at the event space at the lodge / farm and she had also checked K's reviews on social media.

Miss H messaged K through social media, a date was confirmed, and K sent an invoice which set out the details of the arrangement which was for a disco with two costumed mascots in attendance, the date and time and the cost – which was £300. The invoice also provided K's banking details for where the payment should be made to.

Miss H went ahead and made the payment of £300, on 29 November 2023, to the details provided.

On the day of the party, Miss H didn't hear from K, and she reached out to K. K responded advising they had messaged Miss H earlier on as they were struggling to find the venue and asking for Miss H to contact them. K confirmed they were no longer at the venue or nearby.

Miss H advised she had received no missed calls, emails, or messages – and asked for a refund. K advised that their 'partner' had incorrectly messaged a different person on social media instead of Miss H, and they would look to refund Miss H. Sadly, despite K advising they would provide a refund, Miss H never received her funds back.

Miss H got in touch with her bank on 15 January 2024 – as she considered she should be reimbursed. When Miss H initially raised the matter, she requested a chargeback, which was ultimately not successful as the payment had been a faster payment and not a card payment. Miss H, after contacting HSBC again, then had the matter looked into as a fraud / scam claim. Ultimately HSBC declined reimbursing Miss H as it advised that the beneficiary bank (the bank where the funds had been sent to) deemed no fraud had taken place – so in essence deeming the matter was a civil dispute between the two parties. HSBC advised Miss H would need to deal directly with the person she had paid or seek legal advice.

Unhappy with HSBC's response, Miss H brought her complaint to this service. One of our Investigators looked into it but didn't think the complaint should be upheld. In summary, it was our Investigator's view that, based on what he'd seen, he didn't think K had set out with intent to scam Miss H – and it was a civil dispute between the two parties. So, he didn't think he could fairly ask HSBC to provide a refund to Miss H.

Miss H didn't agree with our Investigator's view and requested an ombudsman's review. So, as an agreement hasn't been reached, it 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 Miss H will generally be considered liable for authorised payments. It's accepted that she authorised the payment in dispute and so she is liable for it in the first instance. However, HSBC is a signatory to the Lending Standards Board's 'Contingent Reimbursement Model' (the CRM Code). Under the CRM Code, firms are expected to reimburse customers who fall victim to APP scams, subject to a number of exceptions.

However, the CRM Code is only relevant if I'm persuaded Miss H did fall victim to an APP scam. The CRM Code specifically excludes certain types of disputes. 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;" **

*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

So, taking into consideration the above, I must first decide whether Miss H has likely been the victim of an APP scam 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 Miss H and I don't underestimate her strength of feeling given she was let down by K – on the day of her son's birthday party and was left out of pocket as a result. But not all instances where someone has not received goods or services means they have been the victim of fraud or a scam. And here, I don't think I can fairly say HSBC should reimburse her. I'll explain why.

In order to be persuaded on balance that Miss H has been the victim of an APP scam, I need to look to the definitions set out in the CRM Code, which says;

“DS1(2)

(a) APP Scam

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.”

Looking at the above definition, I firstly need to consider the purpose of the payment and whether Miss H thought this purpose was legitimate. In this case, I'm satisfied she did. Miss H has explained that she believed the payment she was making was for the services of a children's entertainer. Then I need to consider the purpose the recipient (here that is K) had in mind, at the time of the payment, and whether this was broadly in line with what Miss H understood to be the purpose of the payment.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties, I can't fairly and reasonably conclude that it was more likely than not that K set out with intent to defraud Miss H. I'm satisfied, on the balance of probabilities, that the intentions and purpose of the payment match here.

Obviously, I cannot know for sure what was in the mind of K at the time the payment was received. So as a result, I must infer what K's intentions were, based on the available evidence that I have had access to.

As I say, I do have empathy for Miss H. From reviewing the messages between Miss H and K, I do accept that K seemingly wasn't operating at the standards you would expect. Not confirming a location in advance and messaging an incorrect customer instead of Miss H speaks to that. And that they didn't refund Miss H after advising it would. But poor business practice or standards, doesn't automatically mean that K set out with intent to defraud Miss H.

I note the beneficiary bank (where K held its account) has provided our service with some information / comments about K. And it has done so in confidence – to allow our service to discharge our investigatory functions and to assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account. But from reviewing the information, I note that the beneficiary bank has advised that it hasn't had any other formal complaints about K. And from reviewing K's statements, I can see the activity was in line with the nature of the business K undertook.

I also have to weigh up that Miss H has advised that she saw K at the event space at the lodge / farm, and K had seemingly regularly been hired at that location. And Miss H has advised she saw reviews including photos of the events K had undertaken.

So, it seems that K had been booked previously and had carried out the services required of it also. While things went wrong on the day – and no doubt there are questions over the professionalism, standards and organisational requirements Miss H rightfully expected of K – it doesn't automatically mean that there was an intent by K to defraud Miss H and take her money without having any intention of carrying out the service.

I also think had K sought to defraud Miss K from the outset, then they wouldn't have engaged with any communication with Miss H on the day of the event and would have simply ignored her – having already received her money. So, I don't think the actions are typical of someone who set out with intent to defraud.

I accept Miss H has lost out as a result of what happened, and that she considers she has been badly let down by K and wasn't refunded after being told she would. But that in and of itself is not enough to say she's been the victim of an APP scam whereby HSBC would be liable to reimburse her. Overall, I'm satisfied that this scenario doesn't meet the CRM Code's definition of an APP scam.

As HSBC didn't need to consider this as an APP scam, then it didn't need to go on to seek the recovery of any funds from K. I'm also satisfied that there wasn't anything else HSBC could have done to prevent the loss here either, given the value and nature of the payment.

I note that Miss H wasn't happy with the service provided and the delays experienced. I do appreciate there were delays – with Miss H initially attempting to raise a chargeback in her communication with HSBC through the chatbot – which she then had to resubmit. So, there were a few days delay here. And then Miss H had to wait for that answer, which sadly, was always going to advise that it wasn't successful – as a chargeback was the incorrect process and is a scheme for card payment disputes. And once identified, after Miss H spoke with HSBC, the matter then had to be investigated as a scam. So, while there were delays, I can't fairly say HSBC were to blame for the delays – although the process would have likely been frustrating for Miss H. But overall, despite the confusion at the start, matters did get back on track and HSBC did investigate and provide its answer. And it did so in a timely manner.

I'm sympathetic to the position Miss H finds herself in and I am sorry to have to deliver this news to her. Miss H was clearly let down by K and left out of pocket. But, for the reasons I have explained, I cannot fairly say that HSBC should fairly and reasonably be held responsible for refunding her the money she paid. I consider HSBC were fair in considering the matter a civil dispute (which isn't covered by the CRM Code) and is therefore something that needs to be resolved between the two parties through alternative methods.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 8 May 2025.

Matthew Horner
Ombudsman