

The complaint

Mr S complains that HSBC won't refund the money he lost when he says he was the victim of a scam.

What happened

Mr S says that he received messages via a social networking site from a company I'll refer to in this decision as D. He no longer has the messages, so I have not seen them. D had a jewellery shop in Mr S' local area and also offered an investment, which involved D buying and storing gold bullion on behalf of investors. The gold remained in a vault and would be used as leverage to buy jewellery on credit. The subsequent sale of the jewellery would generate an income. Mr S was told that he could withdraw at any time. The expected return was 10% a year, but this wasn't guaranteed.

Mr S says he checked D's website, looked D up on Companies House, and spoke to others who had used D's jewellery store and investment service before deciding to invest.

On 25 July 2022 Mr S went into a branch of HSBC to make a payment of £104,000 to D. He says he went into branch as he believed that this was the safest method, and his funds would be protected. The advisor he spoke to asked Mr S for documentation, so he called D to ask for some. D sent Mr S an invoice relating to the sale of gold which he showed to the advisor. Mr S made an initial payment of £4,000 via mobile banking to show that the payment details matched and says he rang D while in branch to check the funds had been received. The advisor then processed a further payment of £100,000.

A few days after Mr S made the payments, he says D's store shut down. At this stage he was assured that D would be operating again soon but this didn't happen, and D stopped taking Mr S' calls.

Mr S reported what had happened to HSBC. He advised HSBC that D's shop had been there for many years, the investment had been recommended by a friend, he had spoken to representatives of D face to face, had checked the price of gold and had looked D up at Companies House.

HSBC said the case was being considered by a law enforcement agency so it couldn't take any actions until the investigation was complete.

Mr S was unhappy with HSBC's response and brought a complaint to this service. Mr S thinks he is the victim of a scam, and that HSBC didn't do enough to warn him of the risks involved and the steps he needed to take to protect himself before processing the payments in branch.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said there is insufficient evidence to conclude that Mr S was the victim of a scam and that he has a civil dispute with D. And, whilst the £100,000 transaction was made in branch, HSBC had no reason to be concerned about it given the information Mr S provided at the time.

Recovery also wasn't possible.

Mr D didn't agree with the investigator's findings, so his complaint has been passed to me to decide. I have summarised the main points he made below:

- D wasn't an established company as it had only operated for two years. In this two year period D had taken nearly £10 million which has disappeared.
- HSBC misled him when he went into branch to make the £100,000 payment, saying it would check everything.
- His funds went to D and not to the linked company that had an export license. D didn't transfer funds to the linked company.
- The scheme D offered could only be provided by regulated bodies.
- The Economic Operators Registration and Identification number (EORI number) referred to by the investigator applies to scrap gold not bullion.
- He has been informed by the police that the best way to make money untraceable is to buy and sell gold. This appears to be what D was doing.
- The police strongly believe D was operating a scam and said they do not investigate civil disputes. Mr S provided a letter from the police.
- He was vulnerable at the time he made the payment.
- He knows of another victim who has been reimbursed after bringing a complaint to our service.

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 sorry to disappoint Mr S further, but I'm not upholding his complaint, and for broadly the same reasons as our investigator. I'm not persuaded there is sufficient evidence that Mr S is the victim of a scam.

I don't doubt that Mr S has lost out here and it seems he has been badly treated by D. It's also clear that what has happened has had a significant impact on Mr S financially and emotionally at a time that was already difficult for him. I am sorry to hear that is the case.

HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mr S' claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr S to demonstrate that he is the victim of an APP scam.

To decide whether Mr S is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr S thought this purpose was legitimate.
- The purpose the recipient (D) had in mind at the time of the payments, and whether this broadly aligned with what Mr S understood to have been the purpose of the payments.

- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr S says he thought he was investing in gold. He hasn't provided any evidence of this though. He says all the message he received disappeared and that he had in person conversations with D. The only evidence he has provided is an invoice which appears to relate to the purchase of gold. In any event, I haven't seen anything to suggest that Mr S didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose D had in mind, I've considered the wider circumstances surrounding D and a linked business. The key information to this case is:

- D and a linked company were both registered with Companies House and D had been a going concern for a few years.
- D had a physical store that Mr S says had been there for around 30 years. Mr S had also spoken to representatives of D in person.
- A company linked to D was VAT registered and also had an EORI number, required for importing and exporting goods through the UK. It appears likely it also had the proper HMRC permissions (for tax purposes) for trading in gold.
- D is now in liquidation and has had official insolvency practitioners assigned, indicating a genuine business. I've not seen any evidence from administrators to say that D took Mr S' funds fraudulently.
- I've seen statements for the account Mr S sent his money to. The activity there appears to show funds being used as intended and expected.
- The points Mr S has made in response to the investigator's view suggest poor business and financial management but don't go far enough to demonstrate D took Mr S's money through dishonest deception.

Taking all the factors I've raised above into account I think it's more likely than not that D was operating legitimately. It's difficult to say why Mr S hasn't received any returns but based on the evidence currently available I can't fairly say D was operating a scam.

I appreciate the police are investigating and that Mr S has provided evidence from them. At present though the outcome of the investigation is unclear, and charges haven't been brought. If significant details emerge about any prosecution after my decision, Mr S might be able to ask HSBC to reconsider his claim.

Mr S has referred to the fact he was vulnerable at the time he made the payments. I haven't seen any evidence to suggest he told HSBC he was vulnerable. And whilst the CRM Code says a customer should be reimbursed if they are vulnerable as set out in it, I have explained above why I've concluded the code doesn't apply in this case.

Mr S has said HSBC didn't do enough when he went into branch to make the payments. I'm satisfied that questions were asked in branch and Mr S was asked to provide some evidence in respect of the payment. In any event, given what I have said above, and the fact Mr S told HSBC he had used the company before, I'm not persuaded that better intervention would have made a difference at the time. HSBC had a responsibility to protect Mr S from harm, but it wasn't for HSBC to research D in detail as Mr S seems to suggest.

This service considers each case on its individual merits, so I am not bound by previous decisions and cannot comment on any other cases that may have been brought by other consumers.

Based on the evidence available, while I'm really sorry to hear about what has happened, I can't say HSBC should fairly and reasonably reimburse or compensate Mr S for his losses.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 November 2024.

Jay Hadfield
Ombudsman