

The complaint

Mr H complains that HSBC UK Bank Plc won't reimburse him after he lost money to an investment – that he now considers to have been a scam.

Mr H is professionally represented in bringing his complaint, but for ease of reading, I'll refer to all submissions as being made by Mr H directly throughout this decision.

What happened

Mr H has explained that he came across an art investment opportunity, which I'll refer to as 'S' on a social media platform that took his interest.

Mr H explains he reviewed S' website which appeared to be professional, so left his number to be contacted. Mr H then received contact from an individual working at S by instant message. Mr H was told he could purchase art prints from S in order to build an investment portfolio.

Mr H made several payments via two different bank accounts to S, the payments from his HSBC account totalling £15,800. However Mr H then became unable to get in touch with the individuals who were handling his investment. While S has since become insolvent, Mr H has explained that he's never received his prints, or seen what they look like and therefore now considers he has been the victim of a scam.

Mr H got in touch with his bank, HSBC, to raise a claim. HSBC considered Mr H's complaint but didn't uphold it. It said that it considers this is a civil dispute, rather than an authorised push payment (APP) scam, as S was a registered company that has gone into liquidation.

Mr H remained unhappy and referred his complaint to our service. An investigator considered the complaint but didn't uphold it. To summarise, he concluded that this was a civil dispute between Mr H and S, rather than a scam. Mr H disagreed, so the complaint 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.

In broad terms, the starting position at 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.

HSBC is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only

covered by the CRM Code where they have been the victim of an APP scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Mr H has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.

I understand that the payments Mr H made were to purchase fine art prints, as part of an investment. Since S has gone into liquidation, Mr H has explained he's never received his prints and so has no evidence either way as to whether or not his prints exist. From a review of S at a broader level, I understand evidence supports the prints *do* exist, including audits from the relevant storage companies, as well as other investors having received their prints. And in this case, Mr H has been unable to provide any evidence of him attempting to obtain his prints and being unsuccessful. I therefore don't think there's sufficient evidence to support that these prints weren't purchased by S for Mr H.

I understand concerns have also been raised about the value of the prints being significantly less than what Mr H paid, leading him to believe this was a scam investment from the outset. However, ultimately I have to account for the fact that Mr H made the payments to S on the understanding that it would purchase art on his behalf for his portfolio, and it appears that this is what happened. Additionally, there were contracts in place with the artists whose prints were sold who haven't disputed the value of the art quoted, as well as evidence of contracts with other firms to provide services such as printing and storage – so a number of elements to the business that *would* align with expected business activity for such a firm. The nature of the industry invested in also means that mark ups on print values aren't unusual, although arguably not to the extent generally seen here. However, all things considered, as Mr H's and S' purpose for him making the payments therefore broadly aligned, I don't consider the evidence currently supports a conclusion that these payments were the result of a scam.

I understand Mr H has referenced the proceedings of a recent court case concerning S as further evidence that S was most likely a scam.

However, the case considered in court related to the position of a freezing order that was in place over the company's assets, rather than whether S procured payments for fraudulent purposes. In order for a freezing order to be put in place, the possibility of fraud had to only be arguable, not more than likely on the balance of probabilities. And while the judge did make multiple references to the possibility that S may have had the intention to defraud customers, they were also very clear that this was not within the remit of the court case taking place and that this would need to be considered in a trial.

I also understand there has been a more recent settlement out of court by S. However the details of the settlement are confidential and there was no admission of liability. I therefore

don't consider this is persuasive evidence that investors were scammed – as an out of court settlement could be for any number of reasons, such as simply not wanting to pay for legal costs.

Ultimately, I have to decide the case on the facts and information currently available to me. Based on the evidence available, I'm not able to conclude there is sufficiently persuasive evidence that shows HSBC was wrong in saying this was a civil dispute and therefore not covered by the CRM Code.

If new material information does come to light, at a later date, then a new complaint can be made to HSBC. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

My final decision

My final decision is that I don't uphold Mr H's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 April 2025.

Kirsty Upton
Ombudsman