

The complaint

Mr F complains that HSBC UK Bank Plc has not refunded the money he lost to what he believes was a scam.

What happened

In September 2022 Mr F purchased various tickets to sporting events via a third party which sourced and sold tickets, I'll call this third party E. Mr F paid £6,525 for the tickets, he says he was told he would receive the tickets three months prior to the events.

When this deadline passed with no tickets being received, Mr F chased E, and was repeatedly told the tickets would arrive, but they were not forthcoming. Mr F also became aware that the director of E was going through some personal issues, and became concerned that he would not be getting the tickets he had paid for.

So, in August 2023, he contacted HSBC to tell it that he believed he may have been scammed. HSBC told Mr F to wait for the event date to pass, as the tickets could still arrive.

The event date came and went, with no tickets arriving, so Mr F contacted HSBC again. HSBC looked into what had happened but did not think it was liable for Mr F's loss. It said it had provided appropriate warnings before allowing the payment to be made and that Mr F had not taken reasonable steps to ensure the payee was legitimate before making the payment. So, it declined to refund his money to him.

Unhappy with HSBC's response, Mr F brought the complaint to this service and one of our investigators looked into things. But having thought carefully about the evidence available, they thought that this was most likely a civil dispute between Mr F and E, meaning that Mr F would not be entitled to a refund of his loss. They also did not consider that HSBC had provided Mr F with poor service regarding his claim.

Mr F has since said that he would like his complaint to be escalated to an ombudsman, in particular because of the new APP fraud reimbursement rules which came into effect on 7 October 2024. As a result, his case 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.

Having done so and having thought very carefully about all the evidence provided by both parties, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Mr F but, whilst I'm sorry to hear of what's happened, and appreciate the significant impact this has had on him, I don't think I can fairly hold HSBC liable for his 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 that Mr F feels he has been the victim of

fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

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 the relevant payment was made. 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 Mr F under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...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.”

The CRM Code is also 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.”

Fraudulent isn't defined in the CRM Code, but as the CRM Code specifically excludes civil disputes, I think I need to consider, as a first step, whether this was a scam (where a scammer takes money from a customer for no legitimate purpose) or a civil dispute (where a payment is made to a legitimate trading company or business, but there is some dispute about the goods or services that should have been supplied).

If this was a scam, or fraud – then banks (including HSBC) must follow industry and regulatory guidance, including the CRM Code, to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. But where payments are made to a legitimate business for a legitimate reason, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Having thought very carefully about all that Mr F has said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that E set out with an intent to defraud Mr F.

I say this for the following reasons:

- E appears to have been a legitimate business, which had been operating successfully for several years, and which was registered on Companies House. I'm aware there is a current active proposal to strike E off the register, but that does not automatically mean that it has been operating fraudulently, rather than simply being a business that has failed to file the documents needed, and that failure could have been for any number of reasons.

- Mr F has told us that he and people he knew had successfully received event tickets from E both before and after the payment that is in dispute.
- While there is evidence that Mr F also had difficulties receiving other tickets he had paid for, I can see that E gave him a free ticket as a gesture of goodwill to make up for delays, this is not the behavior I would expect to see from a scammer.
- E's account statements do suggest it was carrying out transactions that one might expect from a ticket sales business.
- While it does appear that other people have reported similar issues with E, there is no formal investigation or findings by any official body that it was operating as a scam.

All of this leads me to consider that E was more than likely operating as a legitimate business. I acknowledge that E ultimately did not provide the tickets Mr F says he paid for, but there are many reasons, other than fraud, why a legitimate business may be unable to provide the services it has promised. A business may act unprofessionally but still be carrying out legitimate business. And this service isn't in a position to forensically analyse E's actions here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that E set out to defraud Mr F.

I note what Mr F has said about the new APP fraud reimbursement rules. But those rules came into effect from 7 October 2024 onwards, and they are not retrospective, so they do not apply to the payment Mr F made. I also note that Mr F also had some concerns about how HSBC handled his complaint, but I'm satisfied that it has acted fairly and reasonably in its handling of his complaint.

I know this will be a huge disappointment to Mr F. I appreciate how strongly he feels about this case, and that he has lost a significant amount of money here. But for the reasons I've explained above, I do not consider that the payment in dispute here are covered under the CRM Code, or that it would be fair to hold HSBC responsible for the money lost under any of the other relevant regulations or guidance.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 March 2025.

Sophie Mitchell
Ombudsman