

The complaint

Ms B complains that HSBC UK Bank Plc, trading as first direct, won't refund the money she lost.

What happened

Ms B made three payments to company L. She was referred to L by a property tribunal as she was looking for legal support with a landlord licence dispute. On 30 September 2024 she made a debit card payment for £576, on 6 October 2024 she sent a faster payment for £1,860 and on 26 October 2024 another faster payment for £4,392. At this stage, having become increasingly dissatisfied with the service L had provided, Ms B called the bank and asked it to stop the last payment. HSBC said it could not recall the payment as this was a civil dispute, not a scam.

Unhappy with this conclusion Ms B complained. HSBC re-iterated its position that this was not a scam. It said Ms B had received a service from company L, albeit one she was unhappy with, and L was a genuine company. So it would not be refunding any of the transactions.

Our investigator did not uphold Ms B's complaint. She said from the available evidence she could not conclude Ms B was the victim of a scam, rather it was a civil dispute.

Ms B disagreed with this assessment and asked for an ombudsman's review. She said she was tricked into paying nearly £7,000 to L in the mistaken belief that it was a legitimate law firm only to later discover they were a group of amateurs charging over the top. And HSBC ignored her request to call back the last payment.

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 hear about what happened to Ms B and the impact this has had on her. She has lost a lot of money, but that doesn't mean that HSBC is responsible or that it now needs to refund her.

Not every complaint referred to us as a scam is in fact a scam. Some cases simply involve companies whose business practices were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). This is important as HSBC's obligations change depending on whether the event is deemed to be a scam or a civil dispute.

In law, Ms B is responsible for payments she's authorised herself and HSBC has no

obligation to protect her from a bad bargain or a potential civil dispute.

The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an 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 set this definition out below:

...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) 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 explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"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."

In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

To note, the first two transactions here fall within the timeframe of the CRM code but the last does not. This is because the code was replaced by the Payment Systems Regulations reimbursement framework on 7 October 2024. However, this framework does not apply to civil disputes either.

Here it's clear company L engaged with Ms B though she wasn't happy with the service it provided. She had the contact she expected to, though she has told us she felt bullied. And she repeats that the firm was not staffed by qualified lawyers. But equally she said on the first call with the bank that she knew they were not solicitors. And that in itself does not mean this was a scam.

As I've said above the CRM Code, and its successor, doesn't cover dissatisfaction with a service provider. It seems it was bad service, rather than no service. I note company L is still trading and is registered at Companies House.

Ms B says she was misled but there's any number of reasons for this which don't amount to fraud. Unfortunately, businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided. Or relationships break down as work progresses. But all these scenarios amount to civil disputes which banks aren't responsible for.

In the round, haven't seen sufficient evidence here to be able to conclude that L set out from the beginning with the intent to defraud Ms B or that Ms B has been the victim of a scam here. Rather, she received a sub-par service.

Ms B also says that HSBC ignored her request to recall the last payment. I have listened to

the calls between the parties on 26 October 2024 and I don't find that to be the case. I think the fraud team engaged well with Ms B and explained the approach the bank takes, why it was categorising this as a civil dispute and what that meant in relation to her recall request.

It also explored if there was any opportunity to recover the first payment made by card. This would have been through the chargeback scheme. The chargeback process is voluntary and run by the card scheme whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'.

Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer, so here HSBC, acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its customer. I can see that HSBC did not attempt a chargeback claim. It explained this was because company L had not failed to provide the service it sold (albeit the service did not meet Ms B's expectations). I think that decision was reasonable in the circumstances.

And finally, I don't think the payments were out of character as there were other recent payments higher than the ones in question. I'm not going to go into detail on this because, given that I'm supportive of HSBC decision to conclude this is a civil dispute, there isn't any basis upon which any intervention ought reasonably to have caused concern with any of the payments. So, I can't fairly criticise HSBC for not having done more in these circumstances.

I know this will be a huge disappointment to Ms B but I can't safely say that this situation meets the high legal threshold and burden of proof for fraud. I sympathise with the position Ms B has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against L. But for the reasons I've explained above, I don't think it would be fair to hold HSBC responsible for the money she's lost.

My final decision

I am not upholding Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 12 March 2025.

Rebecca Connelley
Ombudsman