

The complaint

Mr K and Mrs L complain that HSBC UK Bank Plc (“HSBC”) won’t refund a payment they made as part of a scam.

What happened

The background to this complaint is well known to all parties, so I won’t repeat it in detail here. But in summary, I understand it to be as follows.

Mr K and Mrs L were introduced to the owners of a business in 2020. This business offered an investment opportunity in which they would buy gold from Dubai and sell it in the United Kingdom, at a profit, in their capacity as a wholesaler. This company will be further referred to as “Company A”.

Satisfied with the information they’d seen regarding the investment, Mr K and Mrs L made a payment of £7,015 from their HSBC account in October 2020 to Company A. Mr K and Mrs L received returns until around September 2022. When these payments stopped, Mr K and Mrs L attempted to contact Company A but were unable to get in touch with them.

Mr K and Mrs L complained to HSBC that they’d fallen victim to a scam requested reimbursement of their loss.

HSBC investigated the matter but declined to reimburse Mr K and Mrs L on the basis that this was a civil dispute between them and Company A, and that the payment was not covered by the Contingent Reimbursement Model (CRM) Code. Unhappy with this response, Mr K and Mrs L referred their complaint to our service.

An investigator looked into Mr K and Mrs L’s complaint but didn’t uphold it. The investigator said that they didn’t think there was sufficient evidence to demonstrate Mr K and Mrs L had fallen victim to an APP scam and so HSBC weren’t liable to refund them.

Mr K and Mrs L disagreed with the investigator’s findings and provided further evidence and arguments including, but not limited to, the following:

- The true purpose Company A had in mind was fraudulent and the payment should be covered by the CRM Code.
- An ongoing criminal investigation shows that there is a credible suspicion of fraud.
- There are many victims and the volume of transactions to Company A ought to have flagged with HSBC and triggered an investigation into their conduct.
- Some banks have refunded their customers, setting a precedent for other banks to refund their own customers.

As the complaint couldn’t be resolved by the investigator it 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.

Mr K and Mrs L have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr K and Mrs L's complaint. This is not meant to be a discourtesy to Mr K and Mrs L and I want to assure them I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payment was authorised, so the starting position is that HSBC isn't liable for the transaction.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

HSBC also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr K and Mrs L.

HSBC are a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The Code also explains that it does not apply to *"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 order to reach my decision on this complaint, I've considered the purpose for which Mr K and Mrs L made, and Company A received, the payment. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mr K and Mrs L made the payment to fund an investment in gold. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mr K and Mrs L made the payment.

Mr K and Mrs L have confirmed that there is an ongoing investigation by law enforcement. But, importantly, I've not received any confirmation that Company A or its directors have been prosecuted or found guilty of fraud, or that Mr K and Mrs L's funds weren't used in the agreed manner.

Furthermore, an investigation by a statutory body isn't, in and of itself, proof that fraud has occurred. So, I don't find this evidence persuasive that Company A set out to scam Mr K and Mrs L.

I'm also aware that Company A are currently in liquidation. I've reviewed the liquidator's most recent report and, while they reference ongoing investigations into the actions of Company A, they do not draw the conclusion that the company defrauded investors.

I have every sympathy for Mr K and Mrs L as they've lost a substantial amount of money. But, there could be a whole host of reasons behind the failure of Company A and the financial mismanagement or failure of a business doesn't mean that Mr K and Mrs L's payment would meet the definition of an APP scam as per the CRM Code.

Ultimately, the evidence provided by Mr K and Mrs L doesn't sufficiently demonstrate that their funds were not used in the purpose agreed by them and Company A, nor have they shown that Company A had set out to defraud them at the time of the payment. Because of this, I'm unable to agree that they are victims of an APP scam as defined by the CRM Code.

As referenced earlier in my decision, HSBC has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. That said, HSBC has no obligation to protect its customers from bad bargains or poor investment choices.

As I don't believe Mr K and Mrs L are the victims of an APP scam, and that this is a civil matter between them and Company A, I'm satisfied that HSBC haven't failed any of their obligations by not discussing the possibility of this payment being made as part of a scam with Mr K and Mrs L prior to it debiting their account.

But, even if they had questioned the payment at the time it was made, I don't believe any information HSBC could've obtained would've suggested Mr K and Mrs L may be at risk of financial harm, based on the information that was available at the time. As a result, I can't fairly say HSBC could've prevented their loss at the time of the payment.

Mr K and Mrs L feel that HSBC should've done more to identify the suspicious activity that was being undertaken by Company A, given the value and volume and transactions of being made to them.

Though I've not reviewed the data that shows the number of payments made from all of HSBC's customers to the account Mr K and Mrs L paid, I don't believe that a large volume of transactions ought to have given HSBC cause for concern. Many businesses receive a large volume of transactions and so I don't believe this alone would've caused concern to HSBC that their customers may have been at risk of fraud or financial harm.

I understand that Mr K and Mrs L have their concerns regarding the conduct of the beneficiary bank and whether they could've done any more to prevent their loss, but I'm

unable to make a finding on the beneficiary bank's conduct as part of this complaint against HSBC.

Lastly, Mr K and Mrs L have referenced other banks providing refunds to consumers who've raised similar claims about Company A. I understand why this is frustrating for Mr K and Mrs L, but I'm unable to comment on the outcome of other complaints. Furthermore, as stated above, as I don't believe they've demonstrated that they've been the victims of an APP scam, I don't think it would be fair to hold HSBC liable to reimburse them on the basis that other banks have reimbursed their customers.

Overall, I'm not persuaded that Mr K and Mrs L have fallen victim to an APP scam, based on the evidence available. Following this, I'm not persuaded that their payment is covered by the CRM Code or that HSBC were incorrect in declining their request for reimbursement under the Code. I've no doubt that this will be extremely disappointing to Mr K and Mrs L, given the impact this situation has had on them, but I'm unable to say that HSBC are liable to reimburse their loss.

Should any material new evidence come to light at a later date, for example from the police or the administrators, Mr K and Mrs L can ask HSBC to reconsider their claim. But, as it stands, I can't fairly say HSBC should reimburse their loss under the CRM Code.

My final decision

My final decision is that I do not uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs L to accept or reject my decision before 29 December 2025.

Billy Wyatt
Ombudsman