

## **The complaint**

Mr S complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

## **What happened**

In January 2025, Mr S came across a suitcase he was interested in buying on an online marketplace. He contacted the seller, negotiated a price and then agreed to pay a £20 deposit to reserve the suitcase, which he paid from his HSBC account to account details the seller gave him.

Unfortunately, after he paid the deposit, the seller stopped responding to his messages and Mr S never completed the sale or received the suitcase. He then felt he had been the victim of a scam and reported the payment he had made to HSBC.

HSBC investigated but said the amount Mr S had paid was less than the excess it could deduct from claims, so it didn't agree to refund the payment he had made. Mr S wasn't satisfied with HSBC's response, arguing that he had been vulnerable at the time of the payment, so HSBC wasn't entitled to deduct the excess. And so he referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think Mr S's circumstances meant he met the definition of vulnerable, so thought HSBC had acted reasonably in deducting the excess. And they thought the available evidence suggested this was a civil dispute between Mr S and the seller, rather than a scam. So they didn't think HSBC should have to refund the payment Mr S had made. Mr S disagreed with our investigator, so the complaint has been passed to me.

## **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 in 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.

The Payment Systems Regulator (PSR) introduced the APP Scam Reimbursement (ASR) rules on 7 October 2024 to reimburse consumers who are the victims of APP scams in certain circumstances. However, the rules only apply where the customer has been the victim of an APP scam, which the rules define as:

*“Where a person uses a fraudulent or dishonest act or course of conduct to manipulate, deceive or persuade a Consumer into transferring funds from the Consumer’s Relevant account to a Relevant account not controlled by the Consumer, where:*

- *The recipient is not who the Consumer intended to pay, or*
- *The payment is not for the purpose the Consumer intended”*

The rules also specifically outline that private civil disputes are not covered. And a private civil dispute is defined in the rules as:

*“a dispute between a Consumer and payee which is a private matter between them for resolution in the civil courts, rather than involving criminal fraud or dishonesty.”*

In its published policy statement PS23/3, the Payment Systems Regulator gave further guidance:

*“Civil disputes do not meet our definition of an APP fraud as the customer has not been deceived [...] The law protects consumer rights when purchasing goods and services, including through the Consumer Rights Act.”*

It also provided an example of a civil dispute:

*“...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 in order to determine whether Mr S has been the victim of a scam as defined in the ASR rules, I need to consider whether the payment was made for the purpose he intended and then, if it wasn't, whether this was the result of fraud or dishonesty on the part of the seller.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is more likely to have happened, based on the evidence I do have.

From what I've seen of the communication between Mr S and the seller, the seller suggests that they meet in person to exchange the suitcase. But I'd wouldn't usually expect someone operating this kind of scam to want to meet in-person. The seller also asks for a relatively small amount as a deposit, rather than asking for a larger amount to be paid upfront – which is what I'd usually expect from someone operating a scam. And the seller continues to message Mr S after he paid the deposit, albeit only a few times, to confirm that the deposit has been received and the advert has been removed.

So this behaviour from the seller isn't what I'd usually expect from someone operating a scam, and I think suggests their intention was genuinely to sell the briefcase.

The bank the payment was made to has also told us it hasn't received any other scam reports against the account and doesn't have any concerns about how the account was being run. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same account around the same time if the seller was operating a scam.

I've also seen evidence relating to the account the payment was made to, and while I can't share any details of this evidence, I think it shows the account appears to have been run at

the time as I would expect a legitimate seller's account to have been run and doesn't suggest it was being used to operate a scam.

I appreciate Mr S has said that the seller removed all their listings from the online marketplace after they stopped responding to his messages, and that the seller's account was then banned by the marketplace. And I acknowledge that this could suggest the seller wasn't operating legitimately.

But, based on everything I've seen, I'm not persuaded the available evidence is sufficient to safely conclude that the purpose the seller intended for the payment was different than the purpose Mr S intended, or that the payment wasn't made for the purpose Mr S intended. I think it's likely both Mr S and the seller's intentions for the payment were the same – to pay the deposit for the purchase of a suitcase. And so I don't think this meets the definition of a scam from the ASR rules.

In any event though, even if what happened here did meet the definition of a scam from the ASR rules, I still don't think HSBC would have acted unreasonably in refusing to refund the payment Mr S made.

There are limits on what firms are expected to refund under the ASR rules, one of which is that firms can apply an optional excess of £100 per claim. The rules say that, where a claim satisfies the criteria for reimbursement:

*“The value of the Reimbursable Amount to be credited to the Victim shall be the full value of all Reimbursable FPS APP scam payments, up to the maximum level of reimbursement and less any claim excess imposed.”*

And the PSR has confirmed that:

*“Sending PSPs may apply an excess up to a maximum of £100 per claim.”*

In Mr S's case, the full value of the reimbursable scam payment would come to £20, and the excess HSBC is entitled to apply would be £100. So as the excess is larger than the value of the reimbursable payment, and can be deducted from the reimbursable payment, the value of the reimbursable amount comes to £0.

There is a further consideration when considering whether it is fair to apply the excess, which is that the rules explain the excess can't be applied if the consumer was vulnerable at the time of making at least one payment falling within the claim – and their vulnerability had a material impact on their ability to protect themselves from the scam.

I've thought carefully about whether Mr S should be deemed a Vulnerable Consumer under the definition set by the rules, which defines this as

*“...someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care.”*

And I appreciate Mr S has mentioned to our service that, at the time of the payment, he had recently been on a long-haul flight and that this impaired his ability to protect himself. He's also sent us a number of pieces of medical evidence about cognitive decline following long-haul air travel.

But from what I've seen, it was Mr S who initiated the conversation about the suitcase with the seller. He was able to ask questions about the dimensions and lock on the suitcase, to negotiate a lower price, to discuss where to meet and dates when he would be available,

and to request a photo of the serial number of the case to check it was genuine. Mr S also doesn't appear to have been put under significant time pressure by the seller or been subject to any other kind of social engineering.

So while I don't doubt the circumstances he has mentioned or underestimate the impact they had on him, I think it appears Mr S was still able to assess the risk of what he was doing and take action to protect himself. I'm not persuaded Mr S was vulnerable in a way that materially affected his ability to protect himself from the scam here.

And so I don't think his circumstances meet the definition of a vulnerable customer from the ASR rules and that HSBC has acted reasonably in applying the excess to his claim.

I've also thought about whether HSBC should reasonably have been able to prevent the scam from occurring. These are some situations where I'd reasonably expect a firm to make further enquiries about a payment before deciding whether to process it – such as where there are grounds to suspect it presented a fraud risk. If a firm failed to respond proportionately to such a risk, and doing so would have prevented the consumer from incurring a fraudulent loss, it may be fair to hold it liable.

In this case, I don't think the scam payment would reasonably have looked particularly suspicious to HSBC. It was a one-off payment that wasn't for an unusually large amount. I therefore consider it reasonable that HSBC simply processed the payment in line with Mr S's authorised instructions without completing further checks.

I've also don't think anything I would reasonably have expected HSBC to have done would have led to any of Mr S's funds being recovered from the account they were sent to. So, I don't think HSBC missed an opportunity to recover Mr S's loss either.

I sympathise with the position Mr S has found himself and I appreciate that my decision will come as a disappointment to him. But I can only look at HSBC's responsibilities here and, for the reasons I've explained above, I think it has fairly considered his claim under the ASR rules and I wouldn't have expected it to do anything further here. So I don't think it would be fair to hold it responsible for the money Mr S has lost.

### **My final decision**

For the reasons set out above, I don't 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 9 January 2026.

Alan Millward  
**Ombudsman**