

The complaint

Mrs E and Mr H complain that HSBC UK Bank Plc ('HSBC') won't refund the money they lost as the result of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

In summary, Mrs E and Mr H made two payments from their HSBC account to an individual I'll refer to as K. The payments were made in October 2023 and November 2023, for £5,000 and £3,000 respectively. The payments related to obtaining a visa for Mr H.

Mrs E and Mr H didn't receive the visa and raised a scam claim with HSBC. HSBC declined to refund them saying they have a civil dispute with K.

Mrs E and Mr H weren't happy with HSBC's response, so they brought a complaint to our service.

An investigator looked into their complaint but didn't recommend that HSBC refund them. The investigator was satisfied that HSBC could rely on an exception to reimbursement under the Contingent Reimbursement Model Code (CRM Code) as Mrs E and Mr H didn't have a reasonable basis for believing K could provide the visa. The investigator felt HSBC should've provided an effective warning, but wasn't satisfied that HSBC could've identified the specific scam that Mrs E and Mr H fell victim to. So, they felt a warning wouldn't have prevented Mrs E and Mr H's loss.

Mrs E and Mr H disagreed with the investigator's opinion and asked for an ombudsman to review their case.

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 really sorry to disappoint Mrs E and Mr H who have lost a significant amount of money, which has seriously impacted them. But, having carefully reviewed the evidence, I've reached the same answer as the investigator and for the same reasons. I'll explain why.

In broad terms, the starting position at law is that 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 Mrs E and Mr H authorised the payments, so the starting position is that HSBC isn't liable.

HSBC is a signatory to the CRM Code, which requires them to reimburse victims of APP scams in all but a limited number of situations. But HSBC have relied on an exception to reimbursement in declining to refund Mrs E and Mr H.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.

*there are other exceptions to reimbursement but they don't apply to this case.

I agree that HSBC can rely on this exception to reimbursement for the following reasons:

- Mrs E and Mr H had consulted a separate solicitor prior to engaging the services of K. The first solicitor said Mr H wasn't eligible for the visa they wanted to obtain. So, Mrs E and Mr H should've been concerned when K said he could obtain that visa for them.
- Mrs E and Mr H were paying K significantly more than the actual cost of the visa – nearly three times more. Also, they were asked to make payment to K's personal account, not to his business account. K was the director of a company which offered migration services, but I can't see that Mrs E and Mr H questioned why they would be paying K personally.
- While K was recommended to them by a friend, their friend had used the migration service offered by K's company nearly 10 years prior. I can't see that Mrs E and Mr H completed any checks on K before making the payment.
- K didn't request any documentation from Mrs E and Mr H, which should've concerned them when applying for a visa.

Taking all of these points into consideration as a whole, I'm not satisfied that Mrs E and Mr H had a reasonable basis for believing that K could legitimately obtain the visa they wanted.

While HSBC can rely on an exception to reimbursement, I also have to consider whether HSBC have met the standards set for them under the CRM Code. Where they haven't met the standards, a customer may be entitled to a partial refund.

Based on the size of the payments, I would've expected HSBC to provide an effective warning, and I'm not satisfied they did. However, I'm not persuaded that an effective warning would've had a material effect on preventing the APP scam that took place. I say this because "visa scams" weren't common when Mrs E and Mr H made the payment and it's unlikely that HSBC could've identified the specific type of scam Mrs E and Mr H were falling victim to. So, any warning that HSBC would've given wouldn't have been relevant to the particular scam Mrs E and Mr H were falling victim to and wouldn't have prevented their loss.

On that basis, I'm not satisfied that I can fairly hold HSBC liable or ask HSBC to refund them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr H to accept or reject my decision before 3 March 2026.

Lisa Lowe
Ombudsman