

The complaint

Mr K complains that HSBC UK Bank Plc (“HSBC”) won’t refund £25,000 he says he lost to an investment scam in May 2022.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr K invested £25,000 with a company (“D”) on 8 May 2022. He was told that he was investing in gold, and that he would receive a return on his investment every 12 months.

D subsequently went into liquidation and Mr K lost his money and didn’t receive any returns on his investment. He claimed to HSBC that he had been scammed by D and asked it to consider refunding the money under the Contingent Reimbursement Model (CRM Code).

HSBC declined to refund the money Mr K had lost. It initially considered the claim as a scam under the CRM Code but said that exceptions to reimbursement applied. However, it later told our service that it considered the matter to be a civil dispute rather than a scam. Unhappy with this, Mr K referred the matter to this service.

Our investigator didn’t uphold the complaint. He didn’t think there was enough evidence to conclude that Mr K had fallen victim to a scam, so HSBC wouldn’t be required to reimburse the money he’d lost under the CRM Code. Mr K disagreed, so the matter has been escalated to me to determine.

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, I agree with the conclusions reached by the investigator and have decided not to uphold it for the reasons set out below:

- The CRM Code requires firms to reimburse a customer who has been the victim of an APP scam in all but a limited number of circumstances. However, part DS2(2) of the Code sets out 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 other words, there is no requirement on a firm to reimburse the payments under a Code if there’s not enough evidence to suggest the money has been lost to a scam.
- I appreciate that Mr K feels strongly that he has been scammed by D. But In order to be satisfied that he has fallen victim to a scam, I would need to see convincing evidence that D set out to dishonestly deceive him about the purpose for which the payments were procured. Mr K thought he was investing in gold, and our service has seen statements from the receiving bank accounts D paid around the time of the

investment. The activity here appears to show the funds being used as they were intended by both the recipient and its customers. I have considered this in light of all the evidence when deciding the outcome of this complaint. And given the statements do not support Mr K's claim that his funds were used for fraudulent purposes, it therefore cannot be said that he was deceived as to the purpose of the payment he made to D

- I'm therefore not persuaded there's enough evidence to support that Mr K has fallen victim to a scam here, so the CRM Code does not apply, and HSBC are under no obligation to refund the money that was paid to D. I appreciate that Mr K may know other customers of D who have had their money refunded by their banks. But our service considers each case on its own individual merits. We do not operate a strict system of precedent like the courts (though we do of course strive for consistency). And while I appreciate this may come as a disappointment to Mr K, after considering the individual merits of his case, I'm not persuaded HSBC has acted unreasonably in these circumstances, so I won't be asking it to take any further action.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 May 2024.

Jack Ferris
Ombudsman