

The complaint

Mr L is unhappy that HSBC UK Bank Plc won't refund money he paid to a third party.

What happened

On 26 July 2023, I issued my provisional decision on this matter. I wanted to give both sides a chance to provide any further evidence or arguments before I issued my final decision. That provisional decision forms part of my final decision and is copied below.

What happened

Mr L became acquainted with a person that I'll call C. C said that he was very short of money and needed to pay off a debt urgently or risk losing his businesses. C asked Mr L if he could lend him £25,000. Mr L agreed and took out a loan for that amount with HSBC, before paying it to C.

C made some, albeit late, repayments, but those soon stopped. Mr L says he only lent the money because he was unwell at the time and he claimed C had no intention of repaying it in full.

Mr L reported the matter to HSBC. It said that he had a civil dispute with C. Our Investigator didn't agree. They were of the view that C had made a false claim - that he'd lose his businesses if he didn't receive the money. And, the Investigator thought that the money hadn't been used in the way Mr C claimed it would be.

They also argued that there was strong evidence that C was of bad character - he'd lost a serious civil claim in another country and there were questions about his financial status reported in the media.

The Investigator was satisfied that Mr L had fallen victim to a scam and, because he was vulnerable at the time, HSBC should refund his loss under the provisions of the Lending Standards Board Contingent Reimbursement Model CRM Code ("CRM Code") which requires its signatories to reimburse victims of authorised push payment scams in all but a limited number of circumstances.

HSBC didn't agree. It said it wasn't even sure that C and the person reported in the media were the same person and it wasn't for it to prove how the loan was used. It also pointed to the fact that some repayments had been made.

Finally, it said that the bad character evidence was from years prior and didn't amount to credible evidence.

As no agreement could be reached, the case was passed to me for a final decision.

What I've provisionally 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.

It's first important to state that Mr L is generally responsible for transactions he's made himself. It's also not disputed that the loan agreement is between him and the bank and he is responsible for maintaining contractual payments.

Neither is HSBC liable because C defaulted on the loan or because Mr L was vulnerable when he applied for it. HSBC will only be responsible for his loss if the circumstances of that loss are covered by the CRM Code. But, for its provisions to be relevant, Mr L must have fallen victim to a scam. In this case, in my view, that means the evidence must support a finding that C deceived Mr L into lending him money. Such a finding would essentially be one of criminal wrongdoing. That's not a finding that should be made lightly.

The evidence Mr L has for such a finding is quite limited and largely relies on some suggestions of bad character, his failure to repay the loan and an unpaid civil settlement in another country.

Mr L acknowledges that he reported the matter to the police, but they said it was a civil dispute. In fact, Mr L has attempted to pursue C through civil channels - sending and receiving responses from C's legal representatives. While I've seen the letters Mr L sent to C, I have not seen the responses, other than an excerpt in which C claims that he asked Mr L for a loan because he needed money urgently.

A letter dated 29 April 2022 from Mr L's solicitor to C states:

'you explained to our client that you required £25,000 or you would "end up losing everything". You did not disclose the purpose of said funds during this call but stated that you felt bad having to ask our client to borrow money... As you appeared very emotional and distressed, our client agreed to loan you £25,000 which he obtained from HSBC shortly after the video call on 29 October 2021'

In a further letter, it is claimed that C made a slightly more specific claim - that he'd lose his businesses if he didn't receive the money.

It's not clear whether it was untrue that he owned the businesses in question and could lose them. But, in any case, it's arguable whether either formulation of the statement could reasonably amount to a fraudulent misrepresentation. The phrase "end up losing everything" may simply have been a hyperbolic way of expressing that C was in debt and was in desperate need of money to repay those debts. It's also evident from the 29 April 2022 letter that no specific debt or obligation was mentioned by C during the call.

It is for Mr L to demonstrate that what C said wasn't true. I haven't seen any evidence that C didn't use the money in the way he said he would - to pay off an urgent debt. Much of the evidence Mr L has provided is of C's bad character and failure to pay a civil settlement, but that only seems to support the idea that C's financial position was poor.

I've also reviewed the correspondence between Mr L and C after the loan was

granted. I accept that C seems to have made promises about repayment that he hasn't kept. I don't know whether his claims about having his accounts frozen or the sums apparently in them are true. But, I'm afraid that failed promises to pay do not persuade me that the loan was obtained by deception.

It's not possible for me to know whether C intended to repay the debt in full. But it's clear that he maintained contact after the money was received and made some repayments. Again, the fact he failed to repay the debt in full may simply have been a reflection of his poor financial position.

That's not to say I rule out the possibility that the loan was obtained dishonestly, but there simply isn't enough evidence to support such a finding. I'm afraid that only a police investigation may be able to establish criminal wrongdoing (or otherwise) on the part of C. That means I can't consider these circumstances under the provisions of the CRM Code and I don't intend to ask HSBC to refund the lost money or write off the loan.

As I'm not persuaded that Mr L fell victim to a scam, I don't think HSBC had any obligation to try and protect him or try and recover his money. But, in any case, I've listened to Mr L speaking to HSBC prior to the £25,000 payment being released. He was calm, claimed to have known C for a long time and said that the payment was for medical expenses. He said he'd take all responsibility for the payment if something went wrong. I understand Mr L may have been unwell at this time, but I can't see any reason for HSBC to have been concerned that Mr L was vulnerable or at risk of financial harm.

I'm sorry that Mr L has lost out here. I don't doubt what he's said about being taken advantage of and I accept that he may not have agreed to provide the loan under different circumstances. But, for the reasons I've explained, I can't see any grounds to hold HSBC responsible for his loss.

My provisional decision

For the reasons I've explained, I do not intend to uphold this complaint.

Mr L submitted further evidence and arguments in response to my provisional decision. He said that C's financial position was not poor – as he'd been provided with a screenshot of his bank accounts which showed they had considerable balances. Mr L also provided a screenshot of instant messages in which C claimed he'd be able to repay the loan in full once he returned to the U.K.

He also provided the full correspondence between C and Mr L's solicitor (I'd only seen an excerpt previously). That consisted of C's account of events – including an explanation as to how, in his view, the loan had come about. In addition, Mr L acknowledged that he couldn't prove how C spent his money or that he used it to pay off an urgent debt. He suggested that this was something that I ought to be able to establish.

Finally, he questioned what due diligence HSBC had done on C's account and whether it had adequately assessed his risk profile.

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've carefully considered Mr L's further submissions, but I'm not persuaded to change my decision.

Both screenshots Mr L provided in response to the provisional decision have previously been submitted in evidence. The context around the screenshot showing C's apparent bank account balances was that C, seemingly several months after the loan was granted, claimed to have money in another country that he'd been unable to access for six months. I don't know if this was true, or indeed whether the screenshot is real, but I suggested that C's financial position might have been poor at the time Mr L agreed to take out the loan. That screenshot doesn't persuade me that it wasn't. Neither does the screenshot showing that C promised to repay the loan in full on his return to the U.K., it again just demonstrates that C claimed to have access to money in the U.K., not that he actually did or didn't need the money L lent him to pay off an urgent debt, as he claimed.

The response by C to Mr L's solicitor does little to change my mind either. That's not to say that I accept C's account of events as being honest, complete and truthful. I recognise that there appears to be some contradictions between C's account of events and the instant messages I've seen (particularly around repayment terms). But it does little to illuminate the key issue here – whether C obtained the money from Mr L fraudulently. And, for the reasons I've already explained, I don't find that the evidence supports that view.

I understand Mr L cannot prove how C spent the money he was loaned. He doesn't have access to C's bank statements. I'm unable to share information about C's account with Mr L, other than to say that there's nothing I've seen which contradicts C's version of events.

As for the final points raised by Mr L, I'm unable to consider matters relating to the operation of C's account as part of this complaint. There are limited circumstances under which our service can consider a complaint brought by a consumer about another person's account. But such matters would need to be considered as a separate complaint and, given that I've concluded that Mr L didn't fall victim to a scam, any such complaint is likely to be limited in scope.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 September 2023.

Rich Drury
Ombudsman