

The complaint

Mr and Mrs W are unhappy that HSBC UK Bank Plc trading as first direct (HSBC) hasn't refunded the funds they sent to a third-party company for airport parking services.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

Mr W says that he was tricked into making a payment. He left his car with an airport parking provider (I will refer to as M). After Mr W had dropped off his car, M called Mr W to explain that his MOT had expired, and he could either leave the car where it was at a cost of £90 a day or M could tow it to a garage and get the car put through an MOT for £300. Mr W chose the latter. He's now unhappy that he has evidence to show his car had already been driven from the meet and greet area before M called him and he is disputing the charge made for towing his car away.

HSBC said this is a civil dispute. Our investigator also considered this to be a civil dispute – not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code.

Mr and Mrs W did not agree, so the complaint 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It's clear that Mr W feels strongly that M has tricked him. From his perspective, he wasn't given the full facts about where his car was located at the time the two options were presented to him by M. But I should be clear at the outset that I am only looking at whether HSBC has treated Mr and Mrs W fairly. I am unable to make any finding as to whether M has done anything wrong.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

There's no dispute here that at the time Mr W made the payments to M. This means that the payments are authorised, and Mr and Mrs W are considered liable for them at first instance. However, HSBC was under a range of other duties and obligations at the time, including to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams. It's also a signatory to the CRM

Code. In certain circumstances, that code can entitle a customer to be reimbursed by the bank after they've fallen victim to a scam.

I've thought about whether HSBC has any obligation to refund the losses as a result of the CRM code that it has signed up to. But the CRM code is explicit that it doesn't apply to

"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

In order for me to conclude that the payment Mr and Mrs W made was part of a scam and that HSBC should refund them, I'd need to be reasonably satisfied from the available evidence that M was not legitimate and had set out to defraud them from the outset. But I don't think, based on what I know, that I can safely conclude that. There is a high legal threshold or burden of proof for fraud. And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

A scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. Examples of a civil dispute may be where a consumer has paid a legitimate person or business but hasn't received the goods or service they were promised or is unhappy with the goods or service they have received.

Mr W has provided some communications with M and also details from the airport of when his car left M's meet and greet car park. And I am aware there are many negative reviews about M online. But this is not enough to show Mr W has been a victim of a scam.

Mr W mentioned his research into M that shows one of the Directors being convicted by Trading Standards. This would appear to be in relation to a different meet and greet car service – a different legal entity with a different company number on Companies House to that of M. Other than it the sharing the same first name as the director of M (and providing similar services) – I can't see a link between the two companies.

In any event, even if there was a link, whilst the director's convictions in relation to other matters show that he's of poor character; they do not show that in relation to the transaction carried out by M in this particular case that there was a fraudulent intent.

M was, and continues to operate as, a legitimate supplier. It seems – from what Mr W has said – M charged for a MOT which he has not denied was needed and was carried out as agreed. And I haven't seen any evidence that M didn't use the money in the way it said it would – ie to pay for Mr W's car to be towed to a garage for an MOT.

M may have misled Mr W as to the location of his car and subsequent necessity for it to be towed verses paying a higher premium for leaving it where he was led to believe it was located, but that is not the same as fraud.

Therefore, it's reasonable for me to consider that this is a civil dispute between Mr and Mrs W and M. Mr W may be unhappy with the goods or service they have received. But I'm afraid there simply isn't enough evidence to support a finding that this was a scam.

This is not to say that there is no issue at all between Mr and Mrs W and M. Clearly there is. I don't underestimate the impact this whole matter has had on Mr and Mrs W and I am sorry they have lost out possibly through no fault of their own. But it's simply the case that I don't think HSBC was at fault here and I can't fairly tell it to pay Mr and Mrs W for the money they've lost. In such civil matters, it is for Mr and Mrs W to pursue other ways to resolve their

dispute, including contacting the police and Action Fraud – which I understand they have done. It is also open to them to contact Trading Standards if they haven't already done so.

Ultimately there is insufficient evidence to persuade me that the conclusion HSBC reached was unfair or unreasonable. Based on all the information I've seen; I don't think HSBC's decision to treat this as a civil dispute was unfair or unreasonable.

In addition, HSBC doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. Nor would I expect it to intervene on payments that are unremarkable in the everyday running of an account such as the sum involved here. So, I can't fairly criticise HSBC for not doing more when Mr and Mrs W made the payment.

I realise my final decision will be a significant disappointment to Mr and Mrs W. But this is a civil matter on which I can't decide and so, I don't think HSBC has any obligation to treat the payment as a possible scam payment. And the guidance and rules that HSBC must follow in cases of scams don't apply.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 2 February 2024.

Kathryn Milne
Ombudsman