

## **The complaint**

Mr D is unhappy that HSBC UK Bank Plc won't refund all of the money he lost after falling victim to an investment scam.

## **What happened**

Both parties are aware of the circumstances of the complaint and the details were clearly set out by our Investigator when she wrote to the bank upholding Mr D's complaint. As such, I won't repeat them all here. In summary:

- Mr D was looking for investment opportunities online. He'd sold a property and wanted to earn interest on the proceeds.
- He came across a corporate bond advertised by a wealth management company offering a 5% return per annum. Unfortunately, the website was a clone of the legitimate business and was actually operated by fraudsters.
- Mr D has explained he was reassured by the information that was provided which contained details of the company's FCA registration number and said that investments of up to £85,000 were protected by the Financial Services Compensation Scheme.
- After corresponding with the fraudsters, including a telephone discussion, Mr D decided to invest £85,000. In December 2019 he sent a total of £60,100 from his account at HSBC and £24,900 from an account he held with another financial business. The other business has refunded the money he sent from his account held there.
- Mr D was expecting to receive statements confirming his investment. When he chased up the missing paperwork, he ended up in contact with the genuine wealth management company and it came to light he'd been the victim of a scam. He then contacted HSBC for help.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code which is designed to reimburse customers that have fallen victim to an APP scam. The starting position under the Code is for a customer to be refunded in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case.

I am also mindful that when Mr D made these payments, HSBC should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

When HSBC considered the matter, it acknowledged it ought to have given Mr D more warnings about the type of scam he fell victim to at the point he was making the payments. And so, recognising the provisions of the CRM Code, it offered to refund Mr D 50% of his loss. But it said Mr D ought to share responsibility for the loss as he hadn't met his requisite level of care. Specifically, it considered he did not have a reasonable basis for believing the investment was legitimate and said he ought to have carried out more checks before making the payments. It pointed out he did not check the investment firm's details on the FCA register or Companies House.

Mr D disagreed with HSBC and referred his complaint to this service. One of our Investigators considered the matter and thought HSBC should have fully upheld Mr D's complaint. She didn't think HSBC has established that Mr D had failed to meet his requisite level of care under the CRM Code. She placed weight on the sophistication of the scam. She highlighted that the fraudsters had created a professional operation, with processes and paperwork mirroring what a customer would typically expect to happen when dealing with a genuine regulated firm. She highlighted that Mr D felt reassured that his savings would be safe because of the FSCS protection that was detailed in the paperwork. Overall, considering all the circumstances, she thought HSBC should have fully reimbursed Mr D's loss and that HSBC should have done more than it did when Mr D was making the payments using the bank's telephone banking service. She felt the scam could have been prevented if Mr D had been asked questions about how he'd found the investment and discussed the checks he could make to protect himself.

HSBC disagreed. It said Mr D was not a vulnerable or unsophisticated consumer. It said he failed to take "*reasonable and appropriate*" steps to protect himself from fraud. It pointed out that there was an inconsistency in the version of events around whether Mr D had checked the FCA website or not before making the payments. It suggested Mr D might even have been grossly negligent if he had checked the FCA website and failed to see a clear warning. It referred to a conversation where Mr D had told the bank he hadn't checked the FCA website before making the payments and reiterated that by not doing so, he had not met his requisite level of care.

Our Investigator considered the bank's points. She agreed, on balance, that Mr D did not check the investment firm on the FCA register before making the payments. But she thought that the inclusion of the FCA logo and registration details in the fraudster's correspondence was still credible, especially as Mr D thought he was dealing with a regulated investment firm. She also considered whether it would have made a difference if Mr D had checked the FCA register before making the payments. She noted that if Mr D had searched the FCA register by company name, it would have brought up 16 different regulated firms with similar trading names. Only one entry had a warning about cloned companies associated with it. She thought that even if Mr D had searched using the registration number given in the fraudster's paperwork, Mr D would not have found any information or warnings that would have caused him concern. She also did not think Mr D's actions met the very high bar to be considered grossly negligent.

HSBC did not agree. It maintained that Mr D did not complete sufficient checks. As no agreement could be reached, the case has been referred to me for a final 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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded all of the money Mr D lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- Mr D made the payments using telephone banking. HSBC had the opportunity to ask him questions about the payments he was making and I think it should have done so given Mr D's age at the time and the fact that he was making large payments, which the bank does not dispute are indicators that a consumer may be at risk of falling victim to a scam. If it had done so, I am satisfied the fraud would have come to light and the loss prevented. I have no reason to think Mr D would not have undertaken specific verification steps had the bank advised them at the time.
- In the circumstances, the bank should have fairly and reasonably refunded all the money Mr D lost.
- The money was sent from Mr D's current account. Although Mr D has explained that he wanted to invest the funds, it is not clear exactly how he would have used the money if HSBC had refunded it when it should have done. As such, HSBC should pay interest on the remaining balance it should have refunded at 8% simple per year from the date each payment was made to the date of settlement.

I have carefully considered HSBC's representations about whether Mr D had a reasonable basis for believing the investment to be genuine. But they do not persuade me to reach a different view. In particular, I am not persuaded that Mr D failed to take the requisite level of care required for HSBC to choose not to reimburse under the terms of the CRM Code.

I'm satisfied HSBC has not shown that Mr D lacked a reasonable basis of belief because:

- This was sophisticated fraud which involved a cloned financial services firm. Mr D was not cold called. He found the details online and genuinely believed he was interacting with the genuine firm. He's explained that he spoke to the fraudsters on the telephone and I consider this to be a powerful interaction which builds trust and confidence. Cloning a genuine firm and mirroring its processes gives the interaction legitimacy. I think it is reasonable that this went undetected by Mr D.
- From what I have seen, the correspondence Mr D received is in line with what he would have expected to receive in connection with a genuine investment of this type. In addition, the investment appears to be based on a genuine product that was available at the time.
- HSBC is particularly concerned that Mr D did not search the FCA register to find and verify information about the firm. But I don't agree it was unreasonable for Mr D not to have done so in the circumstances of this complaint. At the time, Mr D was fully in the belief he was in contact with a genuine firm. I've not seen anything that makes me think Mr D had any knowledge or awareness that firms could be cloned.

- I'm also mindful that the average consumer will probably not know exactly what information they are looking to verify on the FCA register unless they are given guidance of the significance of that additional search. As our Investigator has already highlighted to the bank, there are many similar entries for the genuine investment firm on the FCA register and only one of those had a warning about cloned firms associated with it. At the time of the scam, Mr D was 81 years old and retired. He is not a financial professional.
- It is unclear specifically what information the bank thinks Mr D would have learnt by looking for a regulated investment firm on Companies House. I've not seen anything that makes me think Mr D is at fault for not doing this check.

For these reasons, and considering the circumstances as a whole, I'm satisfied Mr D made the payments with a reasonable basis for belief that they were for a legitimate investment. And, for completeness, I am also satisfied Mr D did not act with gross negligence.

### **My final decision**

I uphold this complaint against HSBC UK Bank Plc.

I've found that Mr D ought to have been fully refunded and that it is fair and reasonable that HSBC reimburses him now, in resolution to this complaint.

I therefore require that HSBC:

- pays Mr D the remaining 50% of the money he lost – £30,050
- pay 8% simple interest per annum on that amount, calculated from the date Mr D incurred the loss to the date of settlement- less any tax lawfully deductible. HSBC should send Mr D a tax deduction certificate if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 August 2021.

Claire Marsh  
**Ombudsman**