

The complaint

Mr S complains that HSBC UK Bank Plc won't refund money he lost as the result of a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr S has said he saw an investment opportunity through a well-known social media platform. He's said he followed the social media page and then received contact to discuss the investment. He was told that an initial investment of £1,000 would return an expected profit of between £2,000 - £5,000, within 24 hours, with no risk of losing his money.

Believing everything to be genuine, Mr S made an initial payment of £1,000, through his mobile banking, to the account details he'd been provided. Mr S has said he was told, over the next few days, that his investment had done unexpectedly well, with profits rising to £9,000, then £15,000, and then up to £26,000. Mr S was asked to make a further payment for costs, which he did, but then more fees and charges were presented to him, which he continued to pay. But unknown to him at the time, Mr S was communicating with a fraudster and his payments were being sent to accounts controlled by them.

Overall, Mr S sent payments totalling £13,400.99, to a number of different accounts held by the fraudsters, a breakdown of these is below;

Payment 1	8 July 2021	@ 13:04	£1,000
Payment 2	9 July 2021	@ 06:35	£1,500
Payment 3	10 July 2021	@ 11:40	£1,200
Payment 4	10 July 2021	@ 22:40	£1,850
Payment 5	11 July 2021	@ 14:08	£1,150
Payment 6	13 July 2021	@ 10:40	£1,650
Payment 7	14 July 2021	@ 21:55	£2,179.99
Payment 8	17 July 2021	@ 01:23	£2,871

Mr S became suspicious when the fraudsters continued to ask for payments and so, on 20 July 2021, contacted HSBC to report the matter. HSBC contacted the receiving banks (the banks to which the money was paid) to try and recover the funds, but it wasn't able to recover any of the money Mr S had lost.

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 say one or more of those exceptions applies in this case.

HSBC looked into things and issued its final response letter on 18 October 2021 upholding Mr S' complaint in part. It said it recognised the distress this matter had caused Mr S, but it

didn't consider it was liable to refund Mr S all of the money he lost. In summary it said it had provided warnings for Mr S on payments 1, 3, 6 and 8, which explained that the payments were high risk. But it said, it didn't provide warnings for payments 2, 4, 5 and 7, so it said it should take some responsibility for these payments.

But it added that it had found Mr S should also bear some responsibility, as it thought he could have carried out further checks before making his payments. Overall HSBC offered to provide a 50% refund for the payments where it issued no warning (2, 4, 5 and 7).

Unhappy with HSBC's response Mr S brought his complaint to this service. One of our investigator's looked into things and initially didn't uphold the complaint. She supported HSBC's position that Mr S had failed to meet his requisite level of care, under the CRM code, when making the payments and she didn't think he had a reasonable basis for believing the payments were for a genuine investment and that the person he had transacted with was legitimate. Alongside this, she also didn't consider the payments Mr S made were so remarkable that HSBC ought to have identified a scam risk.

Mr S disagreed with our investigator's view and provided revised testimony, so our investigator reconsidered matters. She noted that Mr S' testimony differed to what he had initially told this service, and it also differed to what Mr S had presented to HSBC when he reported the scam. Due to the inconsistencies, she said she couldn't put any weight on the testimony Mr S had provided, but she maintained that she didn't consider he had a reasonable basis for believing he was making payments towards a legitimate investment.

Our investigator also reconsidered whether the payments Mr S made looked suspicious, and on reflection she considered they did. She thought HSBC could have done more to warn Mr S and that the warnings *it did* provide couldn't be considered effective under the CRM code. She also added that, due to the inconsistencies in Mr S' testimony, she couldn't safely say that any further intervention from HSBC would have made a difference and stopped Mr S from proceeding with the payments. Overall, she recommended that HSBC should also refund Mr S 50% of his losses from payments 1, 3, 6 and 8, along with interest.

HSBC responded and agreed, as a gesture of goodwill, to refund Mr S in line with our investigator's recommendations. Mr S didn't agree with our investigators view. As agreement couldn't be reached 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.

Having done so, I have reached the same conclusions as those of the investigator.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

When thinking about what is fair and reasonable in this case, I've considered whether HSBC should have reimbursed Mr S under the provisions of the CRM Code and whether it ought to have done more to protect Mr S from the possibility of financial harm from fraud. I'm persuaded that Mr S has fallen victim to a scam. But this isn't enough for him to receive a full refund of the money under the CRM Code. The Code places a level of care on Mr S too.

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

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning.
- 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 services; and/or the person or business with whom they transacted was legitimate.

*There are further exceptions within the CRM code, but these don't apply here.

I recognise that Mr S has been the victim of a crime here. He's been deceived by a scam that led him to believe he was investing his money and making large profits. He's been left out of pocket by a significant sum as a result of this scam.

However, the main cause of these losses was the scammer who deceived Mr S. For me to say HSBC is liable in this type of situation, I would need to find that the bank could and should have acted to prevent the eventual loss, or that it failed to meet its obligations in some other way. I'd also need to find that Mr S had taken a reasonable level of care prior to making the payments that led to the losses.

HSBC accepts it was at fault, at least in part, and it could have taken further steps to protect Mr S, with some of the warnings it provided. For much the same reasons as given by our investigator, I think HSBC had an obligation to provide Mr S with warnings and I don't think the warnings it provided could be considered as effective warnings under the provisions of the CRM code.

But as HSBC accepts a share of liability for this and has already refunded 50% of some of the payments Mr S made and made an offer to refund 50% of the remaining payments, I do not need to consider this point further in this decision. I would add that I also agree with our investigator's opinion and reasoning, that based on the inconsistency in the testimonies Mr S has presented (which I'll comment on again below), I can't fairly or reasonably say that any further intervention by HSBC is more likely than not to have prevented Mr S from proceeding with the payments. The question that I need to decide is whether Mr S should fairly be expected to share some responsibility for what happened.

I'm sorry to disappoint Mr S, but having considered everything I don't find that Mr S had a reasonable basis for believing that he was making payments towards a legitimate investment. I'll explain why.

The submissions that Mr S has presented to this service and to HSBC have been significantly inconsistent, to the point where I can't fairly find the recollections he has provided to be either credible or plausible, as such I can put little weight on them.

Notwithstanding the differing iterations of testimony Mr S has provided, it doesn't appear to be in dispute that Mr S was being offered a substantial return on his investment, with no risk to his capital, within a very short timeframe. When considering the investment and the returns promised I find that the offering itself was too good to be true from the outset and to the extent that it ought to have raised significant doubt on Mr S' part. The suggestion that an initial investment could be turned into a profit of between £2,000 to £5,000, doesn't sound feasible, particularly when the timeframe given was one of a matter of hours/days. And I think it was also questionable that the investment carried no element of risk. Furthermore, as the scam evolved, I'm persuaded it became even less plausible when Mr S was told the investment had overperformed to such an extent, that his profits went from £9,000 to £15,000 to over £25,000 in what was such a short timeframe.

Unfortunately, I think the attraction of the significant returns he was being shown led Mr S to ignore the apparent risks. I don't consider that Mr S took reasonable steps to protect himself, even when there were significant signs that all was not as it seemed. I think it is fair and reasonable that the responsibility is split equally here between Mr S and HSBC.

Finally, I've considered whether HSBC did what it could to try and recover the funds, when Mr S reported the scam to it. From what I've seen HSBC contacted the receiving banks in a timely manner, but unfortunately it wasn't able to recover any of the money Mr S had paid. Based on this I think HSBC has met its obligations with trying to recover the funds Mr S lost.

Putting things right

HSBC has already refunded Mr S 50% of the money he lost from payments 2, 4, 5 and 7, so I don't require it to make any further refunds for these four payments. But it should now;

- Refund Mr S 50% of the money he lost from payments 1, 3, 6 and 8 – being £3,360.50.
- Pay 8% interest on this amount from the date the claim was declined under the CRM code, to the date of settlement.

My final decision

My final decision is that I partially uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 September 2022.

Stephen Wise
Ombudsman