

The complaint and what happened

Mr J, in his capacity as the director of a limited company which I'll refer to as M, complains that HSBC UK Bank Plc ("HSBC") won't reimburse in full the money M lost to an investment scam.

The full details of this complaint are well known to both parties, so I won't repeat them again in detail here. Instead, I'll summarise the key points and focus on giving my reasons for my decision:

- Mr J was looking to re-invest M's funds to maximise interest earnings. He came across an investment opportunity after completing a web form and receiving a call from an individual who discussed his needs. Unfortunately, the company that Mr J was recommended had been impersonating a well-known financial business.
- Mr J only realised that he'd been scammed after he'd already parted with £77,000 – he'd noticed a discrepancy in his portfolio balance and ended up ringing the genuine business after looking up its complaints department's phone number on the internet.
- HSBC accepted it should have done more to protect M's money before it executed the payment instruction. But it also held Mr J equally liable on the basis that he didn't conduct proper checks into the investment opportunity before making the payment. HSBC re-imbursed 50% of the amount that M had lost.
- Our investigator concluded that Mr J had a reasonable basis for belief in who he was paying and was due full reimbursement under the Lending Standard Board's Contingent Reimbursement Model (CRM) code. He asked HSBC to refund the remaining 50% along with interest. HSBC disagreed that Mr J had a reasonable basis for belief and so the matter was escalated for an ombudsman's 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 agree with the conclusions reached by the investigator for the following reasons:

- HSBC is a signatory of the CRM code which requires firms to reimburse customers who have been victims of authorised push payment fraud, except in limited circumstances. Those exceptions are:
 - The customer ignored an effective warning in relation to the payment being made.
 - The customer made the payment without 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 with whom they transacted was legitimate.

- HSBC hasn't relied on Mr J ignoring an effective warning in deciding not to reimburse him in full. Rather, it doesn't believe that Mr J had a reasonable basis for belief. So, I've carefully considered the arguments HSBC has put forward in relation to this.
- I don't agree with HSBC's assertion that Mr J departed from his 'no cold calls' rule on this occasion. In his submissions to HSBC, Mr J explained that he had completed an online questionnaire. In my view, a call-back in such a situation doesn't constitute as being cold called. For all intents and purposes, the call wasn't unsolicited – even if at first Mr J wasn't sure who he was speaking to. Mr J did attempt to independently verify the identity of caller, but this was a sophisticated scam and the phone number listed on the business' website also turned out to be fake.
- I don't think the correspondence Mr J received ought to have led him to be particularly concerned about whether he was dealing with a genuine financial business. The promotional literature and the email correspondence from the scammer looked reasonably professional. The literature had quite convincing and professional looking features, including information about the Financial Conduct Authority and the Financial Services Compensation Scheme.
- I'm satisfied, on balance, that Mr J's belief that he was dealing with a genuine business was reasonable. He checked the business' website and logged on to the customer portal before deciding to invest. He also spoke to his financial advisor about the returns. I don't think the rate of return was so high that Mr J ought to have thought the opportunity was too good to be true.
- I don't agree with HSBC's suggestion that Mr J didn't carry out proper checks because he made general enquiries instead of seeking 'formal' advice from his financial advisor. Mr J has said that the reason for contacting his financial adviser was to check that the business he'd been recommended offered a competitive return. That he chose to invest without obtaining advice formally was a matter for his judgement in relation to the suitability of the investment. It doesn't imply that Mr J didn't carry out sufficient checks into the authenticity of the investment, or that he wasn't vigilant to scams.
- While acknowledging that Mr J could have done more – as can most customers – overall, I'm not satisfied that HSBC has established he didn't have a reasonable basis for belief that he was paying a legitimate person/business for genuine goods or services. It follows that I'm not persuaded that the exception for reasonable basis for belief applies to Mr J, such that HSBC can choose to hold him jointly liable for the financial loss suffered by M.

Putting things right

To put things right, HSBC UK Bank Plc needs to:

- reimburse the remaining 50% of M's loss; and
- add 8% simple interest per year to that sum, less any lawfully deductible tax, calculated from the date it declined to offer a full refund to the date of settlement. It has been our approach for many years to add interest at 8% simple on loss in these types of situation and I see no reason to depart from that here.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 17 August 2022.

Gagandeep Singh
Ombudsman