

## **The complaint**

Mr P is unhappy that HSBC UK Bank Plc won't refund money he lost to a scam.

## **What happened**

Mr P fell victim to an investment scam that targeted victims through personal connections in the same geographical area. The scheme was seemingly operated by two individuals – V and K. K was a mutual friend of one of his close friends, who'd already invested in the scheme. Mr P was aware of the apparent success of several of his friend's investments for around a year before he decided to invest.

Mr P was introduced to V and K in April 2021. They offered an investment opportunity in foreign exchange trading. V presented himself as a trader who, using certain strategies, could make significant profits.

Mr P says he looked up V online and could see that he appeared to be a successful trader. He had virtual meetings with both V and K. Mr P quizzed the two about the investment, but he says they were able to point to other people that had successfully received their investment back. Mr P says that he was able to confirm that another victim received regular returns from their investment. He says that he found V and K to be open and humble.

Mr P entered into an agreement with V and K on 7 May 2021. He paid an account held in the name of V £100,000.

Over the following few months he received copies of documents which appeared to show profitable trades taking place. He also received regular monthly statements. As his investment appeared to be doing very well, he invested a further £10,000 on 8 July 2021. V and K also said that they'd incorporated a new hedge fund – and showed Mr P apparent evidence of this.

In September 2021, Mr P tried to withdraw his money but was met with excuses and delays. It became apparent that other people were in the same position as Mr P – he says that there were around 100 other investors (many who have been reimbursed by their banks). By the middle of 2022, after a series of broken promises by V, it became apparent that Mr P would not receive his investment back.

He reported the matter to HSBC. It initially said that Mr P had a civil dispute with V. Later it said that he had fallen victim to a Ponzi scheme which aren't covered under the provisions of the Lending Standards Board Contingent Reimbursement Model ("CRM Code") which requires it signatories (like HSBC) to refund victims of APP scams in all but a limited number of circumstances. After the matter was referred to our service, HSBC reviewed the complaint again. It said that it had met its obligations under the CRM Code, but Mr P should have taken more care. So, it continued to decline to reimburse him.

One of our investigators didn't agree. They thought that the warning provided by HSBC hadn't been 'Effective' as required by the CRM Code. They also thought that Mr P had held a reasonable basis for believing the investment to be legitimate. They pointed to the fact Mr

P had been introduced to the scheme through a friend and had spoken to V for some time before investing. The investigator also wasn't convinced that the checks HSBC suggested Mr P should have carried out would have brought the scam to light. So, the investigator recommended that Mr P be refunded in full, as well as paid 8% simple interest from the date it declined his claim under the CRM Code to the date of settlement. In addition, the Investigator recommended HSBC pay Mr P £250 compensation to reflect the significant impact of its refusal to reimburse him when he first brought the matter to its attention.

HSBC didn't agree, in summary it said:

- There were very relevant parts of the warnings it provided, which should have impacted Mr P's decision making.
- The returns promised (10% a month) were too good to be true.
- There's no evidence that any other investor had confirmed receiving their money back.
- Mr P paid V money without any understanding of how he could access those funds.
- The fact the investment was sold to him as carrying no risk should have been a red flag.
- It did not dispute that Mr P believed the investment was real, but the test in the CRM Code was objective: what a reasonable person would have believed.

As no agreement could be reached, the case was passed 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.

The starting point under the relevant regulations and the terms of Mr P's account is that he is responsible for transactions he's carried out himself. However, HSBC are signatories to the CRM Code and, taking into account regulators' rules and guidance, codes of practice and what I consider to have been good industry practice at the time, should have been on the lookout for unusual and out of character transactions to protect its customers from (among other things) financial harm from fraud.

I've first considered whether HSBC should refund Mr P under the provisions of the CRM Code. HSBC seek to rely on two of the exceptions to reimbursement:

- Mr P ignored an 'Effective Warning'
- Mr P made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.

#### *Did Mr P hold a reasonable basis for belief?*

I've considered this point carefully and having done so I've decided that Mr P did have a reasonable basis for believing that the investment scheme was legitimate.

In doing so, I've taken into account that Mr P had a personal connection to K – he was not a completely unknown third party. I understand that many of the victims of this scam were from the same geographical area and it's evident that personal connections were used to entice further victims into the scam. I can understand how this would have given the scheme an impression of being both somewhat exclusive and more trustworthy.

Mr P says he also spoke to K and V at some length before investing. He says he asked questions of the two, particularly V, to understand the investment. That would likely have

been reassuring for Mr P – he was dealing with real people and was confident that they were not hiding their true identities.

Mr P says he was aware of the scheme and its apparent success for around a year before he made his investment. I understand he was quite a latecomer to the scheme and many other people, including several people he knew well had already invested by the time he became involved.

It appears (and HSBC seems to accept) that the scheme was run as a Ponzi scheme – in which new investor's money is (to some extent) used to repay existing investors. Mr P says friends were able to show him, not just the fake monthly statements and evidence of trades that V provided but their genuine bank statements showing withdrawals from the scheme. I have seen evidence that some payments from V were received by victims and this is consistent with what I'd expect from a Ponzi scheme. So, I've no reason to disbelieve what Mr P has said about this. I think that evidence, which seemed to demonstrate the success of the scheme, would have been very persuasive for Mr P.

I accept there were elements of the scheme that ought to have caused Mr P to consider its legitimacy. The returns were very high and entirely unrealistic for a genuine investment, particularly one that apparently carried no risk. But the test in the CRM Code is not entirely objective, it allows me to take into account (among other things) Mr P's characteristics. I suspect he may not have fully understood just how difficult it is to reliably generate profits from this type of trading and I think he must have been bamboozled by the claims of V. He also doesn't seem to have understood, through the compounding of interest, how quickly, if the scheme was genuine, his investment would have turned into a fortune.

I suspect the 'contract' contributed to the overall sense of the scheme being genuine – it was quite professional in appearance and gave the impression that V and K were willing to legally bind themselves to the commitments they were making. And, though I haven't seen and heard all the correspondence between Mr P and V that led to the fraud, I have seen the considerable lengths by which V went to try and conceal the fraud after the event, which seems to have included forging various documents and correspondence, often in a highly convincing way. It's evident from Mr P's testimony that some of those fraudulent documents (for example, apparent evidence of 'trades' carried out on his friend's behalf) played an important part in inducing Mr P to invest.

I've given this matter careful consideration and I accept this is a finely balanced point, but I think Mr P did hold a reasonable basis for believing the investment scheme to be legitimate. In deciding that point, I've put weight on the strong personal connection Mr P had to the scam, the fact he was quite a latecomer to the scheme, had witnessed those around him apparently successfully investing and that he doesn't appear to have any real understanding of the realities of the investment being offered. Against that backdrop I can understand why the concerning aspects of the scheme, particularly the guaranteed returns, didn't shake his belief in its legitimacy.

#### *Did Mr P ignore an 'Effective Warning'?*

In order for a warning to be 'Effective' under the CRM Code it must, as a minimum, be understandable, clear, impactful, timely and specific.

Mr P made the £100,000 payment in branch. HSBC said that it gave him a warning. That warning consisted of asking a series of questions:

- *What is the amount of the payment?*
- *What is the reason for the payment?*

- *Has anyone told you what reason to give?*
- *How did you get the payee details? For instance, did someone send them to you by letter, text or email. Or did they phone you or message you on social media?*
- *Has someone contacted you unexpectedly by phone, text or email about this payment?*
- *Has anybody told you how to answer our questions or asked you to mislead us in any way? This could include reasons for the payment or even the amount of the payments.*

It's not entirely clear if each question was asked – the responses recorded by HSBC are fairly limited. HSBC just notes the purpose of the payment (recorded as investing in stocks), that the payee was known to the customer's friend and that the shares will be held 'on friend's name' [sic]. Mr P wasn't investing in stocks, but without having heard the conversation he had, it's difficult to know whether he accurately described the investment or not. The bank's notes also say that Mr P was aware of the risks involved.

In addition to the above questions, there are also a series of additional questions that branch staff are supposed to ask. It's not clear whether they are supposed to ask these questions on every occasion or just where there is further concern. In this case, there isn't enough information recorded about the interaction to demonstrate that any of these additional questions were asked.

As well as the questions, HSBC says it gave a further warning about investment scams. That warning consisted of three paragraphs – one relating to general investment fraud, one to pensions scams and another to cryptocurrency scams. Elements of the first and last paragraph were relevant to Mr P, but chiefly the first. That warning said:

*'Investment fraud typically involves a cold call from someone pretending to offer investments in schemes or products offering high returns. They are either worthless or don't exist. These often involve offering risky investment opportunities to inexperienced investors, who are unable to evaluate risk and cannot afford to lose their money. The Money Helper and FCA website provide more information.'*

The paragraph relating to cryptocurrency scams also mentions *'introducing friends or family with the false promise of greater profits.'*

While the warning (assuming it was given) does contain some relevant information (for example, mentioning high returns), it doesn't really cover off the risk of the circumstances that Mr P found himself in.

HSBC are aware that investment scams take many forms, including Ponzi schemes such as this one. Had HSBC asked Mr P the series of additional questions referenced above and assuming he'd answered those questions honestly, it ought to have been able to tailor its warning to his circumstances – highlighting the key risk factors – the dubious method of generating money, the risk-free returns, the unregulated nature of the scheme and the warning that no real weight could be put on the fact that other people had received returns.

The warning Mr P did see does little to address this risk, explain how scams of this nature work or even explain how to carry out necessary due diligence. Instead, the warning simply notes that inexperienced investors will be unable to evaluate the risk of the investment, but doesn't provide any information about how to do this.

So, I don't think the warning was particularly impactful or specific and I don't think it was 'Effective' as per the definition in the CRM Code. It follows that Mr P didn't ignore an

'Effective Warning' and HSBC cannot rely on this exception to reimbursement under the CRM Code either.

Mr P suggests that a better warning might have caused him to reconsider his investment and stopped him from going ahead altogether. While, as I've pointed out, there were clearly concerning features of the scam, Mr P's involvement with it was on the back of a strong personal recommendation. It's not clear to me that a better warning would have stopped Mr P from going ahead. But, in any case, the impact of this finding is limited to the date from which interest should be paid. Taking into account the uncertainty in any finding about whether a better warning would have prevented Mr P's loss, I think HSBC should fairly and reasonably pay interest from the date it declined the claim under the CRM Code.

Turning to compensation, our investigator recommended HSBC pay Mr P £250 on the basis that it ought to have refunded him when he raised his claim. While I can see that HSBC addressed both the claim and complaint fairly promptly, it initially said that the matter wasn't covered under the CRM Code because he had a civil dispute with V and then, in its final response letter, it said he wouldn't be reimbursed because Mr P fell victim to a Ponzi scheme. That meant that it failed to consider Mr P's claim under the CRM Code at that time and, I think, it should have done. I'm aware that Mr P has been particularly badly affected by this scam and the loss of his funds. So, while I think the fraudsters are principally to blame for Mr P's distress, I think the £250 compensation recommended by our investigator, fairly reflects the additional distress caused by HSBC.

### **My final decision**

I uphold this complaint about HSBC UK Bank Plc and instruct it to pay Mr P:

- The amount of the loss - £110,000, less any sums already recovered or returned
- Interest at 8% simple per annum on that amount from the date HSBC declined to consider his claim under the CRM Code to the date of settlement, less any tax lawfully deductible
- £250 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 October 2023.

Rich Drury  
**Ombudsman**