

## The complaint

In 2016, Mr R held a current account with HSBC Bank Plc. Someone (a cold caller) rang him and told him about an opportunity to invest in a property company which would give him good returns. Mr R subsequently invested £30,000 in the property company. He paid the money from his account with HSBC.

I understand that the cold caller told Mr R that the property company would pay him a dividend after six months and that more would follow, and that he would also get his original investment back after two years.

The property company did not pay Mr R any dividends. In July 2018, it gave him around £15,000 back, and then no more, meaning he had lost around £15,000.

Mr R now thinks that the property company was fraudulent, and that HSBC should have stopped him making the investment. It didn't, so he wants it to refund him the money he lost and add interest.

## What happened

One of our investigators has already looked into this complaint and didn't recommend that HSBC should give Mr R any money back. Mr R didn't agree with the investigator and asked for his case to be reassessed. So, it has come to be as an ombudsman to make a final decision.

Mr R hasn't sent us much information about how the cold caller got in touch with him. But I understand the caller sent him a lot of professional-looking brochures and other paperwork about the property company.

During the course of our investigation, there has been considerable uncertainty about which payments Mr R made and which he received and when. However, using information from both Mr R and HSBC, the investigator found that Mr R probably made his investment in three payments in July 2016, and that he did so through a payment company who then passed the money on to the property company. Similarly, the investigator found that the property company sent two payments direct to Mr R in July 2018. In outline, the investigator determined that the relevant payments were as follows:

Payment number	Date	Type	Amount
1	20 July 2016	Payment from Mr R to payment company	£10,000.00
2	21 July 2016	Payment from Mr R to payment company	£10,000.00
3	22 July 2016	Payment from Mr R to payment company	£10,000.00
4	24 July 2018	Payment from property company to Mr R	£15,000.00
5	25 July 2018	Payment from property company to Mr R	£18.85

Both HSBC and Mr R have had the opportunity to question the investigator's findings about this. Neither have, so I have taken them to be correct, with Mr R's complaint being about

payments 1, 2 and 3. Mr R made all three payments using HSBC's online payments service. By doing so, he effectively instructed HSBC to make the payments from his account.

I do not know what relationships existed between the cold caller, the payment company, and the property company, or exactly which of them took which actions. But as this decision is concerned solely with the actions of HSBC, this is not a significant concern. Where there is doubt, I have attributed the action in question to whichever of the three seems most likely).

### **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.

Sadly, fraud takes place too frequently in the finance industry. And it has several forms. The core of Mr R's complaint is that he believes the payment company had no intention of paying him dividends and returning his investment in the way the cold caller had described. And that both the payment company and the cold caller knew this. Frauds like this are known as Authorised Push Payment (APP) frauds.

HSBC has said that it is not convinced Mr R's case is one of APP fraud. In 2016, both the property company and the payment company seem to have held appropriate registrations as legal companies. So, the investment opportunity the cold caller described may have been genuine, even though it turned out to be unfruitful for Mr R. However, the events Mr R has described certainly have many of the characteristics of APP fraud. And he has also told us that one of the property company's directors had previously served time in prison for fraud. So, I'm totally satisfied Mr R now believes he was victim of organised deception and to be fair to him, and solely within this decision, I have considered his case to be one of APP fraud.

While banks are normally expected to act on their customers' instructions, such as Mr R's to pay the payment company, APP fraud is a significant concern in the banking industry. In July 2016, I would have expected HSBC to be looking out for anything noticeably unusual about payments its customers were making. And if it saw anything suspicious, I would have expected it to contact the customer concerned to check if fraud could have been taking place.

I understand that all three payments were quite unusual for Mr R. They were for large amounts and Mr R had no record of using the payment company. So, I think that HSBC should have checked up on them. I have no significant evidence that it did so.

However, at the time, Mr R seems to have been highly satisfied that the investment opportunity was real and offered him a potentially good return on his money. The cold caller was persuasive and the property company's literature convincing. And both the payment company and the property company seemed to be working legitimately. So, even if HSBC had made reasonable and proportionate checks, I think Mr R would have instructed it to go ahead. I don't hold HSBC at fault for Mr R making the three payments.

In many cases, once a customer has told a bank of suspected fraud, I expect the bank to try to claim the money back from the fraudster's bank. This can be very difficult, as once fraudsters receive money into an account they control, they usually move it somewhere else quickly to reduce the chances of such attempts at recovery succeeding. So, time is of the essence. And in this case, it may have been made more difficult by the intermediary role of the payment company.

I understand that HSBC has not made any attempt to recover Mr R's money for him. But I gather he did not report the fraud for a long time after the three payments, by which time HSBC's chances of success would have been effectively zero. I do not hold HSBC responsible for any failure to recover the money Mr R lost after he reported the fraud.

So, in summary, I don't think I can reasonably hold HSBC at fault for not stopping Mr R from making the three payments. Even if it had questioned him about them, I think he would have told it to go ahead. And, although HSBC didn't make any attempt to recover Mr R's money, by the time it knew about the fraud, it was too late for recovery to be a realistic possibility.

Finally, I would like to say that I am very sorry to hear about what happened to Mr R. Losing money to fraud can be very upsetting and he has my sincere sympathy.

### **My final decision**

For the reasons I have set out above, I am not upholding Mr R's complaint about HSBC Bank Plc. I am not going to tell it to give him any money back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 December 2023.

Steve Townsley  
**Ombudsman**