

The complaint

Mr H complains that HSBC UK Bank Plc hasn't refunded him after he fell victim to a scam.

What happened

The background to this complaint is well-known to both parties. I've discussed the circumstances and the outcome with HSBC and Mr H already. And so I'm only summarising key details in this final decision.

Mr H became caught up in a Ponzi/pyramid scheme in early July 2022. The premise was that Mr H was paying towards something akin to a drop-shipping opportunity, where the merchant (which I'll refer to as L) he was transacting with would use his funds to fulfil and dispatch orders of a range of goods, without Mr H having to be involved himself.

Mr H invested small amounts on 4 and 5 July 2022 to test the proposition. He received returns from L early on and all seemed to be going as planned. Mr H then paid a £1,500 membership fee, which gave him a year's subscription to L's services. Mr H continued to invest funds for several months. He also received back a significant proportion of the sums invested.

By January 2023 Mr H had invested £53,045 and received £51,732.41 in returns. But then L started to give excuses on why it wasn't providing further returns. And eventually all contact ceased.

Mr H reported that he'd been scammed to HSBC. But, after its investigation, HSBC said it wouldn't refund Mr H. It didn't think he'd been the victim of a scam and instead said he had a civil dispute with L.

Mr H was unhappy with the bank's answer and so brought his complaint to this service.

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.

I've already discussed the outcome of this complaint with both parties. I'm issuing this final decision because HSBC didn't accept the outcome, where Mr H did.

Mr H did authorise the payments made toward the scam. And so, under the Payment Service Regulations (2017), he is generally presumed liable for them. But that isn't the end of the story.

HSBC is a signatory to the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code looks to see the victims of scams reimbursed by their account provider.

It is the case that the Code only applies to instances where an authorised push payment (APP) scam has taken place. It doesn't apply to civil disputes.

HSBC says that Mr H has a civil dispute with L, rather than it being a case of him having been scammed. I don't agree. I've seen significant and persuasive evidence from the firms Mr H sent money to as part of this scam. Each firm has confirmed the closure of the account it held for L because of the volume of scam reports received. Such reports are also evident online.

It's also clear from the account statements provided by each firm that L wasn't engaged in any legitimate economic activity. It wasn't doing what was promised, instead repaying some investors with the funds of others.

HSBC argues that Mr H can't have been the victim of a scam because he received so much of his investment back. I agree it's uncommon to see so much money returned. But that doesn't mean a scam hasn't taken place. Mr H has still lost money. It is strange to describe the victim of a scam as fortunate. But here, Mr H has been fortunate to have not lost more to the scam than he did. That doesn't preclude him from receiving a refund of his remaining losses under the CRM Code.

With all of this in mind I'm satisfied Mr H has fallen victim to a Ponzi/pyramid scheme and so ought to benefit from the protection of the CRM Code.

The Code does state that there are exceptions to reimbursement that a firm like HSBC might rely on. But it must establish that one of the exceptions stated in the Code applies. HSBC has failed to do so, largely because it's refused to accept Mr H was the victim of a scam.

The first exception for me to consider is whether Mr H ignored an effective warning. It's unclear to me when or how often HSBC might have presented Mr H with any warnings about scams because there's almost no relevant evidence submitted by the bank. And it doesn't appear there were any interventions beyond generic written warnings.

I'm not persuaded the warning HSBC have suggested was shown would have been enough to alert Mr H that he might have been caught up in a scam. It does little to bring purchase scams to life and much of the content doesn't appear applicable to Mr H's situation. I accept HSBC can't provide a precise written warning for every variation on a scam. But here, given the lack of evidence provided by HSBC, I'm not persuaded it's been able to establish that this exception to reimbursement applies.

HSBC has also provided no comment or evidence on the next exception to reimbursement: whether Mr H held a reasonable basis for believing he was engaging with legitimate parties for legitimate purposes.

It appears this scam caught a lot of people out and there have been many victims. And it's also clear that a lot of people were receiving returns throughout their engagement with L. That receipt of returns will understandably have been very convincing in showing L to be legitimate. Indeed, HSBC are still of the view that L was a legitimate merchant. And so there seems to be no argument from it that Mr H must have held a reasonable basis of belief.

I've not seen any evidence that would lead me to a different conclusion and so I'm not persuaded HSBC has demonstrated that the exception to reimbursement can be relied upon.

Putting things right

HSBC should refund Mr H's loss in full, which stands at £1,312.59. It should also add interest at 8% simple per year, calculated from the date it declined his claim under the Code until the date settlement is paid.

My final decision

I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 March 2024.

Ben Murray
Ombudsman