

The complaint

Mr L complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost through a failed investment.

What happened

Mr L's complaint has been brought to our service by a professional representative. But, as the account is in Mr L's name, I'll refer to Mr L throughout this decision.

In June 2021, Mr L was introduced to an investment by someone in the local community. Mr L says the person who introduced the investment told him they had invested and received returns.

Mr L was told that the funds would be invested in cryptocurrency and that any losses in relation to the capital invested, would be paid back by the company – who I'll refer to as O. Mr L was promised a return of 6% per month, which would be paid on a monthly basis. Mr L searched the name of the contact for O online, and found they were the director of O, and that O was a UK incorporated company.

Mr L made two payments initially, the first for £25,000 on 27 June 2021, the second for £25,000 on 28 June 2021. In December 2021, Mr L made a further investment of £15,000. All of these payments were made to a payee I'll refer to as R. R was the director of O, it appears that the funds went into R's personal account – not O's company account.

Mr L asked to withdraw his investment in early 2022. Between January 2022 and April 2022, he received back £33,000. However, he didn't receive the remainder of his investment back and says the director of O has stopped communicating with him and left the UK.

Mr L raised a fraud claim with HSBC, asking them to refund him. HSBC considered Mr L's claim under the Contingent Reimbursement Model Code (the CRM Code), but declined to reimburse him. HSBC said Mr L had been given an effective warning and didn't have a reasonable basis for believing the investment was genuine.

Mr L wasn't happy with HSBC's response, so he brought a complaint to our service.

An investigator initially upheld Mr L's complaint recommending that HSBC refund him 50% of his loss. However, HSBC disagreed with the investigator's opinion saying they now believe that the investment was genuine and as such Mr L wasn't the victim of a scam.

The investigator reconsidered Mr L's complaint and changed his opinion. The investigator told Mr L that he wasn't satisfied that he made the payments as the result of an APP scam, and therefore HSBC weren't liable for Mr L's loss.

Mr L disagreed with the investigator's opinion, raising the following points:

- Neither O nor R were licensed to take investments.

- The returns promised to Mr L were too high and unrealistic, based on the investment being related to cryptocurrency.
- R left the country, refuses to answer any questions and Mr L hasn't received his investment back as promised.

Mr L asked for an ombudsman to review his case.

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.

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Are Mr L's payments covered by the CRM Code

HSBC are a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code defines what is considered an APP scam as, *"where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent"*.

In deciding whether the circumstances under which Mr L made the payments were fraudulent and meet the definition of an APP scam, I need to consider the purpose that Mr L and O had in mind at the time of the payments.

In this case, Mr L was making the payments to O to invest in cryptocurrency, and I can't see anything that would suggest that Mr L didn't think this was legitimate.

So, I've gone on to consider what purpose O had in mind and whether it was in line with what Mr L thought.

Based on the information we have available I'm not satisfied that I can safely conclude that Mr L's funds weren't used by O in the intended manner – which was investment in cryptocurrency. I say this because:

- O was a UK incorporated company which had been operating for nearly a year prior to Mr L making his payments. It wasn't until October 2023, a substantial time after Mr L made his payments, that a notice to strike off was issued.
- O has returned over half of Mr L's invested funds, which isn't what I'd expect to see if O had taken the money from Mr L with no intention of returning it.
- It's highly likely that something has happened which has caused O to fail as a business. This could be due to poor management of the company, failure to generate the returns promised to its investors, or some other reason. However, the failure of the business, doesn't mean that when O took the funds from Mr L it didn't have the intention of, or didn't in fact, invest Mr L's money as agreed.

Taking all these points into consideration as a whole, I'm not satisfied that I can safely conclude that O took Mr L's payment through dishonest deception or without the intention of investing the money as agreed with Mr L.

On that basis, I'm not satisfied that the circumstances under which Mr L made his payments, meets the definition of an APP scam as per the CRM Code. This means Mr L's payments aren't covered by the CRM Code and I can't hold HSBC liable for Mr L's loss due to any obligation under the CRM Code.

Is there any other reason I can fairly ask HSBC to refund Mr L

I've also thought about whether HSBC could've prevented Mr L's loss when he made the payments.

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should've been on the lookout for, and had systems in place to protect its customers from, potentially falling victim to fraud or scams. In situations where potential fraud is identified, I would expect HSBC to intervene and attempt to prevent losses for the customer.

Having carefully considered the information available at the time that Mr L made these payments, I'm not satisfied that intervention by HSBC would've made a difference.

I say this because Mr L had been referred to this investment by someone in his local community, who Mr L says had invested with O and received returns from O. Also, the checks that Mr L had completed on O, showed that they were a legitimate company registered in the UK company with no concerning information at Companies House.

While O weren't regulated by the FCA, cryptocurrency wasn't a regulated activity. And, just because O was offering an unregulated investment product, doesn't necessarily mean that they were taking funds by dishonest deception. So, I think it's unlikely that any questions asked by HSBC would've prevented Mr L from making the payments or prevented his loss.

I appreciate that Mr L has lost a substantial amount of money, but in this case, I have to decide whether I can fairly hold HSBC liable for that loss.

I'm really sorry to disappoint Mr L, but I'm not satisfied that I can fairly ask HSBC to refund him in these circumstances.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 April 2024.

Lisa Lowe
Ombudsman