

The complaint

Mr B complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost when he says he fell victim to a scam.

What happened

What Mr B says

Mr B says that he received some money following a claim. The funds were shown on Mr B's statement as 'damages'. After receiving the funds, Mr B completed some online research into suitable investments. He completed various online forms and started to receive calls back about potential investment opportunities. One business discussed a company I'll refer to as H in this decision. H was a private rental development company which offered loan notes to investors to raise money for its projects.

On 7 June 2019 Mr B transferred £20,000 for a bond in a known company and on 12 June 2019 he transferred £10,000 to H. In around June 2020 Mr B says he was advised his investment had matured and was worth £12,500. If he reinvested, Mr B was advised he'd receive a preferential rate as an existing customer. Mr B says his funds weren't returned and were reinvested. He also invested a further £11,000 in July 2020.

In July 2023 Mr B's professional representative sought information relating to Mr B's account and in October 2023 sent a letter of complaint to HSBC. Mr B said that HSBC facilitated payments to what was clearly a scam scheme. He also said HSBC was on notice that he had been through a serious life event given the credit to his account of over £57,000, and that he wanted to invest - given the £20,000 payment shortly before funds were sent to H. Given these factors, and the previous activity on Mr B's account, he says HSBC should have intervened and asked questions about the out of character transactions to H.

Mr B says there was a clear intention to defraud which is demonstrated by the fact Mr B was advised of guaranteed returns and the fact a director of H was also a director of 22 other companies, many of which are now dissolved. Mr B also noted that the fact loan notes were sold to a non-sophisticated investor like himself, in breach of FCA and other rules, demonstrates H ran a fraudulent scheme. If HSBC had asked questions, it would have uncovered that the loan note was unsuitable and that he was vulnerable. He says that HSBC should then have conducted its own due diligence and warned him which would have prevented his loss.

What HSBC says

HSBC didn't agree to reimburse Mr B. It noted that H went into administration and liquidators had been appointed, and there was no formal communication from the FCA or FSCS to say H operated a scam. Overall, HSBC said Mr B had a civil dispute with H.

Mr B was unhappy with HSBC's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that he couldn't ask HSBC to consider Mr B's complaint under the CRM Code.

Mr B didn't agree with the investigator's findings, so his complaint has been passed to me to decide. He says he is the victim of a sophisticated scam, and his loss could have been avoided if HSBC provided a duty of care. Mr B's response was lengthy, so I have summarised what I consider to be his main points below:

- The investigator failed to take into account that HSBC should have done more to protect him based on FCA Principles of Business, Conduct of Business Sourcebook, and PAS 17271: 2017. Mr B also referred to warnings issued by the FCA in respect of investment fraud and Unregulated Collective Investment Schemes (UCIS) in particular, and to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) provisions in respect of effective warnings.
- HSBC should have completed additional checks and asked Mr B questions about the payments. Had it done so, it would have been alerted to the fact the intended investment wasn't FCA regulated; the investment was promoted by an unregulated agent; Mr B wasn't a high net worth or sophisticated investor, so the investment was inappropriately marketed; and the returns were high, and well above the Bank of England interest rate. He pointed out that the FCA has said high returns are a red flag.
- If HSBC had acted appropriately Mr B's losses could have been prevented. He was an inexperienced investor and would have heeded advice from his bank.
- H's business model entirely reflects that of a Ponzi scheme (the FCA definition of which was provided) and at least 25% of funds were used to pay introducers.
- Mr B was advised the investment offered guaranteed returns, and was low risk and safe, and H's marketing material also said the investment was low risk. This wasn't true and shows a clear intention to defraud.
- The administrator's progress report identified a large number of transactions that warrant further investigation which brings into question H's business model and shows investors' funds weren't necessarily used for investment. He said the sheer volume of transactions being investigated was an indicator of wrongdoing.
- The investigator ignored the context of Mr B's vulnerabilities and HSBC's obligation to protect vulnerable customers. Mr B was an inexperienced investor and HSBC should have considered him to be financially vulnerable due to a sudden change to his financial circumstances immediately before the payments.
- Mr B referred to multiple decisions published by this service which he believes support his position.

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 deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Whilst I have considered all points raised by Mr B, I will not comment specifically on each one. I also cannot comment on other decisions issued by the Financial Ombudsman Service.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

HSBC is a signatory to the CRM Code. Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mr B's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr B to demonstrate that he is victim of an APP scam.

To decide whether Mr B is victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr B thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr B understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr B thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.
- Points raised by Mr B are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. For example, Mr B has referred to the fact that administrators have said they need to look into various transactions made by H. But there is currently no evidence to show funds weren't used for the intended purpose.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr B's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr B's payment

was different to his. So, I consider HSBC acted fairly in not considering Mr B's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr B can ask HSBC to reconsider his fraud claim.

HSBC should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I haven't been provided with Mr B's account activity for the whole 12 month period before this transaction. I do know that Mr B made a £20,000 payment a few days before his first payment to H. Given this payment, it's debateable whether a £10,000 transaction was so unusual and out of character that HSBC ought reasonably to have intervened.

But I'm not persuaded that if HSBC asked Mr B the kind of questions I'd expect it to if intervention was required, it would have had any concerns, or that the payment would not have been made. H was a legitimate company that at the time the payment was made was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest HSBC should have been concerned that Mr B might be falling victim to a scam. Many of the concerns Mr B has raised have come to light after payments left Mr B's account. And it wasn't for HSBC to analyse in detail the documentation provided to Mr B or to provide investment advice.

Mr B's representative says that HSBC should have been aware of his vulnerability based on a large credit to his account and the reference being 'damages' and, based on this, done more to protect him. Damages can be paid for many reasons, and I'm not persuaded this credit and reference alone ought reasonably to have led HSBC to put any additional protections in place.

I'm very sorry to disappoint Mr B, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund him based on the evidence that is currently available.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 December 2024.

Jay Hadfield
Ombudsman