

## **The complaint**

Mrs L complains that HSBC UK Bank Plc did not refund the £25,000 she says she lost to a scam.

## **What happened**

Mrs L and her husband, Mr L, were introduced to an individual that I will call 'X' who had an investment company. X said he could help them invest in cryptocurrency and they saw X's company was on Companies House with X listed as the director. Mr L invested funds first, and a few months later Mrs L also invested. Some of the funds Mrs L invested came from Mr L and they were both named on the document regarding the investment from X.

Mrs L was assured she would receive returns of 6% per month and her initial investment would be protected from the volatility of the market. She sent X £10,000 on 27 November 2021 and £15,000 on 20 December 2021. Following this, Mr L received periodic returns totalling £33,000 but these stopped in April 2022 and Mr and Mrs L could no longer get in touch with X.

The following year, Mrs L got in touch with HSBC via a representative to say she had been scammed and to ask for reimbursement under the Lending Standards Board's Contingent Reimbursement Model ("CRM") code, which is a voluntary code that HSBC has signed up to that gives additional protection to victims of authorised push payment ("APP") scams. HSBC was not able to provide a meaningful response in the time allowed so the complaint was referred to our service.

Our Investigator looked into the complaint and initially partly upheld it, as they felt neither party had met their obligations under the code. So, they recommended a 50% refund of the loss incurred by Mrs L. HSBC responded and did not agree this fell under the protection of the CRM code, as they did not agree a scam had occurred and felt it was more likely an unregulated investment gone wrong. On reviewing the evidence provided, the Investigator agreed that this was more likely a risky investment as opposed to a scam.

Mrs L's representative disagreed with the findings and said, in summary, there was no contract with X and he did not have a license so this cannot have been a legitimate investment.

As an informal agreement could not be reached, the complaint has been 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.

It isn't in dispute that Mrs L authorised the payments totalling £25,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of a scam.

As mentioned above, HSBC signed up to the CRM code and under this the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

*...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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

So, I've considered whether or not the transactions fall under the scope of an APP scam as set out above. Having done so, I haven't seen enough to agree that it does. I'll explain why in more detail.

Firstly, Mrs L sent the funds to the individual she was expecting, so I'm satisfied the first part of the definition is not met. What's left to decide is if X did not plan to use her funds for the intended purpose and if he set out to defraud her when she transferred the funds.

Mrs L's representatives have pointed out that X did not have a registered investment company. However, X was providing investments in cryptocurrency, which in itself is unregulated. The company was registered on Companies House and had been for over a year with some filings in that time. And while there was a notice to strike off for the company, this was not until October 2023, and this was suspended until January 2024. With this in mind, I don't think there was an indication that at the time Mrs L sent X the funds, they intended to defraud her and not invest these on her behalf.

I have reviewed the beneficiary bank statements, though I am limited to what I can share with Mrs L due to Data Protection laws, as this information is confidential. Having reviewed this, it is not clear that X defrauded Mrs L and did not use her funds for the intended purpose.

Most importantly, Mr and Mrs L did see returns on their investment. These went into Mr L's sole account, but it appears they made these investments together and the returns were paid after Mrs L's investment, so I think these are relevant to her case also. While it can be a common tactic for scammers to give a victim a token amount of returns, these are normally intended to entice the victim to part with more money, which is not the case here. Mrs L had already parted with her money and has not indicated that she intended to invest further. And they did not receive token payments back but instead X sent them a total of £33,000. This leads me to believe that this was a genuine, unregulated investment that went wrong at some point. And based on what I've seen I'm not satisfied that X took Mrs L's funds with the intention of defrauding her. So, I don't think this case can be considered under the CRM code and I don't think HSBC has made an error when it did not reimburse Mrs L.

I've also considered the fact that HSBC should be on the lookout for activity that might suggest a customer was at risk of financial harm, intervene in unusual or out of character transactions and try to prevent customers falling victims to scams. In this case it can be said the payments were out of character when compared to Mrs L's normal account activity. But even if HSBC had raised these for additional checks, I don't think these would have prevented Mrs L from making the payments. I say this because Mrs L had been introduced to X by an acquaintance who had received returns, the company was registered on Companies House and as I set out above, I don't think this met the definition of an APP scam.

With all of this in mind, I don't think HSBC has made an error in the circumstances so I don't think it needs to reimburse Mrs L.

**My final decision**

I do not uphold Mrs L's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 31 May 2024.

Rebecca Norris  
**Ombudsman**