

## **The complaint**

Ms B complains that HSBC UK Bank Plc ('HSBC') won't refund the money she says was lost as the result of a scam.

## **What happened**

In April 2020, Ms B made two investment payments of £10,000 to R. R was a company offering fixed rate bonds. Ms B's investment was a four year deferred bond at 11%.

In September 2022 a winding-up petition was issued against R and in December 2022 administrators were appointed.

Ms B believes she's been the victim of an investment scam.

Through a professional representative, Ms B raised a fraud claim with HSBC in February 2024. HSBC declined to refund Ms B, saying she paid a legitimate company who has gone into liquidation. HSBC say Ms B has a civil dispute with R.

Ms B wasn't happy with HSBC's response, so she brought a complaint to our service.

An investigator looked into her complaint but didn't uphold it. The investigator wasn't satisfied that Ms B's payment wasn't used for its intended purpose, so she didn't have a claim under the Contingent Reimbursement Model Code (CRM Code). The investigator also wasn't satisfied that HSBC could've prevented Ms B's loss, based on the information available at the time she made the payments.

Ms B disagreed with the investigator's opinion, saying she is an inexperienced investor and believed what she was told about the investment. Ms B asked for an ombudsman to review her 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.

I'm really sorry to disappoint Ms B, but having carefully considered all the evidence, I've reached the same answer as the investigator. I'll explain why.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

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).

### Is Ms B entitled to a refund under the CRM Code?

HSBC are a signatory of the CRM Code, which 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 order to decide whether the circumstances under which Ms B made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Ms B thought this purpose was legitimate.
- The purpose the recipient (R) had in mind at the time of the payments and whether this was broadly in line with what Ms B understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I’m satisfied that was as a result of dishonest deception.

Ms B was making the payments for a four year fixed rate bond. I haven’t seen anything that would suggest that Ms B didn’t think this was legitimate.

So, I’ve gone on to consider what purpose R had in mind and whether it was in line with what Ms B thought.

In reaching an answer on what purpose R had in mind, I’ve considered the wider circumstances surrounding R. The key information to this case is:

- R are a UK incorporated company set up in February 2017. R didn’t go into administration until 2022, which was 2 years after Ms B made her payments.
- The liquidator has confirmed that R held significant assets and that the director intends to refund investors. This is what I would expect to see where a company has suffered difficulties, rather than a company that set out to defraud investors.
- While R has gone into administration, there is no evidence that R took funds from investors through dishonest deception or with a different purpose in mind.
- The literature provided by R about its bond made it clear that it wasn’t FCA regulated and that it was a high risk investment.

The onus is on Ms B to prove her claim that her funds weren’t used for their intended purpose or that they were obtained by dishonest deception.

Taking all of the above points into consideration as a whole, I’m not satisfied that there is sufficient evidence to say Ms B’s funds weren’t used in the manner agreed by R or that the purpose R had in mind was different to Ms B’s.

On that basis, I’m not satisfied that the circumstances under which Ms B made her payments meets the definition of an APP scam as set out in the CRM Code. So, I can’t fairly ask HSBC to refund her under the CRM Code.

### Is there any other reason I could hold HSBC liable for Ms B’s loss?

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

fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect HSBC to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

However, even if I was satisfied that HSBC should've intervened and asked Ms B questions before following her payment instructions, it wouldn't change the outcome in this case. I say this because I'm not satisfied there was any information that Ms B would've given HSBC about R that would've concerned them she might be at risk of financial harm.

So, I'm not satisfied that HSBC could've prevented Ms B's loss or that I can fairly ask them to refund her.

I'd like to add that if material new information comes to light at a later date, as a result of the ongoing investigations, Ms B can ask HSBC to reconsider her claim.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 15 April 2025.

Lisa Lowe  
**Ombudsman**