

## **The complaint**

Mr V complains that HSBC UK Bank Plc ('HSBC') won't refund money he says was lost as the result of a scam.

## **What happened**

In November 2023, Mr V made two payments from his HSBC account to a party I'll refer to as R.

Mr V says he knew R for a number of years as they both worked in the hospitality sector. R ran a local establishment which Mr V frequented and appeared to live a well-off lifestyle, which he told Mr V was due to his success in online trading.

R agreed to help Mr V make money through trading and they signed a contract. The contract said R would make trades on Mr V's behalf, returns would be 120% per annum and the equity would be protected with R making up any shortfall from his own funds. The contract also included an initial trial period. The contract covered a payment of £5,000, which Mr V made to R on 4 November 2023.

Mr V made a second payment to R of £2,500 on 12 November 2023 as a further investment, but says he didn't receive a contract for the additional payment.

Mr V says he didn't receive his first return of £500 which was due on 5 December 2023, so he contacted R. Ultimately, R told Mr V that he had lost his funds in making the trades and that he needed more time to continue trading to try and get the funds back. Mr V says he's received no funds back from R and that R has stopped communicating with him.

Mr V raised a fraud claim with HSBC, asking them to refund him. HSBC considered Mr V's claim under the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) but declined to refund Mr V saying he had a civil dispute with R.

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

An investigator looked into Mr V's complaint but didn't uphold it. The investigator felt it was more likely than not that the funds were used for their intended purpose, and therefore HSBC wasn't liable for Mr V's loss.

Mr V disagreed with the investigator's opinion, raising a number of points including:

- R made false representations and misled Mr V, which are breaches of the Fraud Act 2006.
- At least one other individual has lost funds under similar circumstances.

As the case couldn't be resolved informally, I've been passed the case to review.

## 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.

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 Mr V 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 Mr V made the payments meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr V thought this purpose was legitimate.
- The purpose that R had in mind at the time of the payments and whether this was broadly in line with what Mr V 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.

In this case, Mr V was making a payment to R for making trades on his behalf. There is nothing to suggest that Mr V didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose R had in mind, I've taken into account information received from the beneficiary bank which I can't share due to data protection issues under GDPR. But, based on that evidence, I'm satisfied that it's more likely than not the funds were used for their intended purpose by R.

Mr V says he believes R has committed fraud under the Fraud Act 2006. He has pointed to misrepresentation of the investment, misleading of Mr V in relation to R's experience and the rate of return, as well as a breach of contract. However, this isn't enough to say that at the time R took the payments, R never intended to complete trades with the funds or set out with the intention to defraud Mr V.

I appreciate that the contract between R and Mr V allowed Mr V to withdraw his funds (under certain circumstances), suggested that the capital wasn't at risk and that Mr V was guaranteed a return. But, just because there has been a breach of the Fraud Act, doesn't mean the circumstances under which Mr V made his payments meets the definition of an APP scam under the CRM Code.

From what I've seen, I'm satisfied that it's more likely than not that R did use Mr V's funds for trading as agreed, however the trades R placed weren't successful which resulted in him losing Mr V's funds. The messages between Mr V and R support this, with R telling Mr V he's lost the money but is trying to get the money back by placing additional trades and asking Mr V to allow him more time to do this.

As I'm satisfied that the funds were used for the intended purpose (trading) as agreed with Mr V, I can't safely conclude that Mr V's payments meet the definition of an APP scam under the CRM Code. On that basis, I can't ask HSBC to refund Mr V under the CRM Code.

*Is there any other reason I can ask HSBC to refund Mr V*

While HSBC should be on the lookout for payments that may suggest a customer is at risk of financial harm, that doesn't mean that they're automatically liable where a customer makes a payment and doesn't get what they paid for.

In this case, I'm not persuaded that HSBC acted unreasonably in following Mr V's payment instructions without intervening. I say this because I'm not satisfied that Mr V was tricked into making a payment, which R has benefitted from. I think R's intention was to make the trades and make a profit for Mr V as promised. Unfortunately, R wasn't able to make the profit he expected and lost Mr V's funds through the trades he placed.

I'm really sorry to disappoint Mr V, as I know that he has lost a significant amount of money. However, I'm not satisfied that I can fairly hold HSBC liable for his loss or ask them to refund him.

### **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 V to accept or reject my decision before 9 July 2024.

Lisa Lowe  
**Ombudsman**