

## **The complaint**

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

## **What happened**

The background to this complaint isn't in dispute, so I'll provide a brief summary.

In 2018, Mr S entered into an investment with a company I'll refer to as P. P was offering loan notes on various property developments. Mr S was told he would receive a 12% annual fixed rate on his loan note.

Mr S made two payments from his HSBC account. The first payment on 17 December 2018 was for £100,000. The second payment on 15 February 2019 was for £50,000.

Mr S says P entered into administration in January 2022, and then into liquidation.

Mr S hasn't been able to recover his investment.

Mr S, through a professional representative, raised a fraud claim with HSBC in September 2023. HSBC investigated Mr S's fraud claim, but declined to refund him saying he had a civil dispute with P.

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

An investigator looked into his complaint but didn't recommend that HSBC refund him. The investigator explained that if HSBC had intervened when Mr S made the payments, it's unlikely that his loss could've been prevented, as all of the information at the time suggested the investment was genuine.

Mr S disagreed with the investigator's opinion and raised the following points:

- We haven't applied the appropriate threshold for intervention by HSBC when considering the application for the Contingent Reimbursement Model Code.
- We failed to give weight to the investments offered by P being ponzi schemes.

Mr S 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.

Both of Mr S's payments were made prior to the introduction of the Contingent Reimbursement Model Code (CRM Code) on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to the payments Mr S made.

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 2017 (PSR's).

But, 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.

Based on the size of the payments Mr S made, I would've expected HSBC to have identified a potential risk of financial harm and asked Mr S a number of open questions about the payments.

The type of questions I'd expect HSBC to have asked would include: how Mr S found the investment, what return he had been offered and what checks he had done on P. HSBC also may have asked what documentation Mr S had received in relation to the investment.

But, even if HSBC had asked the type of questions I would've expected, I'm not satisfied that it would've prevented Mr S from making the payments or prevented his loss.

I say this because all of the information available about P at the time of the payments in 2018 and 2019, suggested that this was a legitimate investment.

P was a UK incorporated company since 2011 and all of the documentation that Mr S received looked professional. The rate of return wasn't too good to be true, and I haven't seen any negative information that would've been available that suggested this was a scam.

Mr S says that P was running a ponzi scheme, but there isn't any evidence to say that concerning information was available when Mr S made his payments.

So, even if HSBC had asked open probing questions, I not satisfied that they would've been concerned by the information Mr S would've given them. On that basis, I don't think they acted unreasonably in processing Mr S's payment instruction, and I'm not satisfied that they could've prevented Mr S's loss.

I'm really sorry to disappoint Mr S, but I can't fairly hold HSBC liable for his loss.

### **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 S to accept or reject my decision before 26 November 2024.

Lisa Lowe  
**Ombudsman**