

The complaint

Mr E complains that HSBC UK Bank Plc (trading as First Direct)) didn't protect him from an investment scam.

Mr E is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr E in this decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr E says he was introduced by a broker (who I'll refer to here as 'EC') in an investment with a company (who I'll refer to here as 'J'). Mr E says 'J' was an individual trader who used investors' money to trade currency in the forex market, and that he would get a 3% monthly return on his investment.

Mr E has also said he and another investor met with the Director of 'J' and 'EC' in 2018 to discuss the investment and review 'J's' trading history. He added that he didn't invest immediately – as he was waiting for funds to be realised from another investment. Mr E said that a representative of 'EC' (who said he was the sole broker for 'J') had also invested with 'J' and that all his clients had received their returns on time.

Mr E was provided with literature about 'J' as well as a payment schedule for the returns and a loan agreement signed on 4 June 2020.

On 1 June 2020 Mr E made a payment of £50,000 towards the investment. Given the size of the payment, Mr E contacted HSBC to confirm it was genuine and to complete the transaction. During that telephone call HSBC checked the beneficiary bank details with Mr E and clarified the purpose of the payment. The payment was then processed.

Mr E has said he received a return on his investment of £2,227.50 (half of what he'd been promised) in September 2020. 'J' went into liquidation in December 2020.

Believing he'd been scammed, Mr E raised the matter with HSBC in September 2023. HSBC looked into things but didn't uphold Mr E's complaint. In summary, it didn't think Mr J had lost the money as the result of a bank error; and it questioned whether this was a civil dispute rather than a scam. HSBC tried to recover the lost funds from the beneficiary bank – but this was unsuccessful.

Unhappy with HSBC's response, Mr E then brought his complaint to the Financial Ombudsman.

One of our Investigators looked into things but didn't think the complaint should be upheld. In summary she considered the matter to be a civil dispute, rather than a scam.

Mr E didn't agree with our Investigator's view and so the complaint has been passed to me for a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having thought very carefully about HSBC's actions, I'm not intending to uphold Mr E's complaint, for largely the same reasons as our Investigator. I do appreciate how disappointing this will be for Mr E, but I don't think I can fairly say HSBC should reimburse him. I'll explain why.

It isn't in dispute that Mr E authorised the payment that left his account. But he alleges that he has been the victim of an Authorised Push Payment (APP) scam and that 'J's intent from the start was to deceive him.

I'm sorry to hear of what's happened to Mr E, and I can understand entirely why he feels so strongly that this money should be returned to him. But not all cases where individuals have lost money are in fact fraudulent and/or a scam.

HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (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 E'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 E to demonstrate that he is the victim of an APP scam.

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

- The purpose of the payments and whether Mr E thought this purpose was legitimate.
- The purpose the recipient ('J') had in mind at the time of the payments, and whether this broadly aligned with what Mr E 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 E thought he was investing in forex with 'J'. 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 'J' had in mind, I've considered the wider circumstances surrounding 'J' and any linked businesses. The key information to this case is:

- Typically, investment scams involve a fake investment and/or a fake company and generally, the victim has no prior relationship with the fraudster other than the

relationship built to discuss the investment itself. In this case, Mr E had links to 'J' via 'EC' whom he'd known since 2016 and had taken previous investment advice from. And Mr E received correspondence direct from 'J' about the investment, as well as a receipt from 'J' for the £50,000.

- I appreciate that there are ongoing investigations into 'J' with Mr E saying the matter had been reported to the police and he has provided a letter from a solicitors' firm about an investigation into the operation of 'J'. But I must make a decision here based on the available evidence I do have, as well as the wider surrounding circumstances. And because I'm not aware of the nature or outcome of those investigations, I don't consider them to be a persuasive factor at this stage.
- I'm not persuaded, from what I've seen, that Mr E was pressured to invest. He was told about the investment by 'EC' whom he'd known since 2016 and who had introduced Mr E to another investment opportunity in 2017. He also had plenty of time to think about his decision to invest whilst waiting for funds to become available.
- It's also not typical for a fraudster to be so easily traceable and for them to ask for funds to be transferred into accounts held in their genuine name or in the name of a company in which they are a Director, which I've seen happened in this case.
- Finally, whilst I'm unable to share details about a third party and the nature of their relationship, I've also considered the beneficiary bank account, where Mr E's money was sent. The evidence I've seen from the beneficiary bank doesn't raise any concerns that the account was being used for anything but legitimate purposes

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose 'J' had in mind when it took Mr E's payment was different to his. So, I consider HSBC acted fairly in not considering Mr E's complaint under the CRM Code.

Overall, based on the evidence that is currently available, I'm not persuaded that this situation displays the hallmarks most typically associated with a scam. The circumstances put forward by Mr E more likely lend themselves to an investment that went wrong with a company that ultimately ceased trading. It follows that, I can't safely say that this would likely meet the high legal threshold and burden of proof for fraud.

This is not to say that there is no issue at all between Mr E and 'J'. Clearly there is. But on balance, I haven't found the evidence shows this was an APP scam covered by the CRM Code, so I do not find the CRM Code applicable to the payment Mr E sent. Neither do I otherwise find HSBC liable to refund Mr E for any other reason. I think it acted reasonably in investigating Mr E's claim – and it did not reach an unreasonable or unfair outcome in deciding not to refund him.

I don't say any of this to downplay or diminish what Mr E has been through. He has my sympathy; in that he hasn't received the return on his investment as he thought he would. But overall, I don't think HSBC has treated Mr E unfairly by not refunding him the payment he made under the CRM Code.

For completeness I've thought about what is likely to have happened if HSBC had questioned Mr E about the investment with 'J' when he called to make the £50,000 payment. This was a large payment for Mr E's account to a new payee - and where there is an interaction between a bank and its customer (as there was here), we'd expect a bank to take this opportunity to find out about the purpose of that payment.

But given I support HSBC's decision that this is most likely a civil dispute rather than a scam, there isn't any reasonable basis on which I can say *any* intervention by HSBC is likely to have caused concern about the payment – as essentially – there was no evidence to uncover that Mr E was in the process of being scammed.

Furthermore, Mr E was fully trusting of 'EC' – a broker he'd used before. So, any concerns HSBC *might've* raised with Mr E about 'J' would, in my opinion, likely have been allayed by 'EC'.

This was also the second time Mr E had invested the sum of £50,000 (having invested the same sum back in 2017) – and he's told us he had previously invested in forex. He wasn't therefore new to investing.

So, taking all this into account, I don't think any intervention by HSBC before processing the £50,000 payment to 'J' is likely to have prevented Mr E's loss.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision **before 26 November 2024**.

Anna Jackson
Ombudsman