

The complaint

Mr L is unhappy that HSBC UK Bank Plc will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr L has brought his complaint through a representative, for ease of reading I will refer solely to Mr L in this decision.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. Between September 2016 and August 2018 Mr L made 13 faster payments totalling £200,000 to firm H, or one of its payment intermediaries, for a forex investment. The payments are set out below.

payment	date	value
1	28/09/2016	£10,000
2	20/01/2017	£10,000
3	22/03/2017	£10,000
4	20/07/2017	£10,000
5	21/08/2017	£10,000
6	22/11/2017	£10,000
7	18/12/2017	£10,000
8	20/03/2018	£10,000
9	22/05/2018	£20,000
10	05/07/2018	£25,000
11	23/07/2018	£25,000
12	14/08/2018	£25,000
13	23/08/2018	£25,000

Mr L saw an advert for the opportunity in a property investment newsletter he subscribed to – he had up until that point invested through property. He then proactively contacted the introducer listed in the ad. He understood he would receive a fixed 5% monthly return with 100% of capital returned on exit. He received the expected returns until March 2019. They totalled £107,500. Firm H went into liquidation in June 2019.

Mr L says HSBC did not protect him or his money as it ought to have, it should have intervened and asked him questions about the payments. This would have prevented him falling victim to the scam.

HSBC rejected Mr L's claim for a refund and said it wasn't a scam, rather it was a civil dispute between Mr L and firm H.

Our investigator did not uphold Mr L's complaint. She said whilst she agreed it was a scam, she could only consider payments from 18 December 2017 onwards due to the time limits

we must adhere to. She found HSBC ought to have intervened in the payment on that date, but didn't think a proportionate intervention would have prevented Mr L's loss.

Mr L disagreed with this assessment and asked for an ombudsman's review. In summary, he said he understood we can only consider payments from 18 December 2017. As such, HSBC should have intervened during this payment of £10,000 and taken the steps in their policy to question the transaction, irrespective of whether Mr L had previously made payments to the firm.

He thinks HSBC should have informed him of the high risks involved in transferring such large amounts of money and the risk of losing the funds. Even though there was no negative public information about firm H at the time this should not be used as a justification to ignore potential fraud. Had HSBC warned and/or challenged Mr L he would have seriously reconsidered his decision as he had a trusted, long-standing relationship with HSBC.

For its failings, Mr L says HSBC should be held partially responsible and refund at least 50% of the payments made after 18 December 2017.

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.

When HSBC reviewed Mr L's refund claim and complaint it concluded this was a civil dispute. However, I am satisfied this was a scam based on a court hearing which took place on 31 July 2020. The judge concluded this was a ponzi scheme whereby funds from new investors were used to pay returns to existing investors.

There's no dispute that Mr L made and authorised the payments. Mr L knew who he was paying, and the reason why. At the stage he was making the payments, he believed he was investing through a legitimate company. I don't dispute Mr L was scammed and he wasn't making the payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mr L's instructions. So in the first instance Mr L is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments pre-date its introduction, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that HSBC should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some possibility of financial harm.

In this case I don't think HSBC ought to be held liable for the transactions. I'll explain why.

The first transaction this service can consider is payment 7. It was high-value compared to Mr L's regular account activity (excluding the previous payments that form part of this scam) and so HSBC should have contacted Mr L to ask for some detail about the payment before processing it.

This means I need to decide if an appropriate intervention by HSBC would have made a difference to Mr L's decision to send the payment. On balance I don't think it would. I say this based on the questions HSBC should have asked given the features of investment scams at the time – but taking into account that it had no duty to give investment advice.

At this time investment scams were often characterised by rates of return that were too good to be true and by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now'. So I would have expected HSBC to ask questions that probed these areas to establish the basic context of the payment.

This 'investment' had none of these characteristics. Mr L says he selected this investment opportunity after seeing it advertised in a property newsletter he subscribed to. He proactively contacted the introducer he then used. They provided a substantial level of detail about the forex investment with firm H, including confirmation of the regulated liquidity provider that would hold his funds. He was told he would receive a fixed monthly rate of return of 5%, or that this could be compounded and paid annually. I note the introducer wasn't authorised, but Mr L had checked that it was listed at Companies House. As he had previously only invested in property it was reasonable that he had no knowledge of FCA regulation. And I think had HSBC probed this area it would have been satisfied as Mr L had the details of the regulated business that firm H said it used to hold its investors' capital.

There is no record of any published warnings or negative reviews about firm H in December 2017. It wasn't until early 2019 that it stopped making payments to its clients prior to liquidation in June 2019. So it seems at the time of the event there would have been no public information that HSBC ought to have been aware of and reacted to. Or indeed that Mr L would have come across had HSBC suggested he first complete more checks.

And most crucially, Mr L had received the returns he expected through 2016 and 2017 so he would have had no doubts about the legitimacy of the investment and the payment he was making on 18 December 2017.

I am aware the FCA published a warning about Forex trading scams in August 2017. This warned of individuals being targeted by firms after they had searched for investments online through search engines like Google and Bing, and then being promised very high returns. So I can't find that HSBC would, or ought to have, connected that risk with this scam had it questioned Mr L.

In the round, I am satisfied that a proportionate intervention from HSBC would not have prevented Mr L's loss given the characteristics of this investment scam.

I have then thought about whether HSBC did what this service would expect to recover the funds once Mr L made a claim in November 2023. Given the length of time that had passed and the fact firm H had entered liquidation in 2019 I'm satisfied that recovery from the receiving bank(s) was a not a viable option.

This means I am not instructing HSBC to refund any money to Mr L. This is a difficult decision to make, I'm sorry Mr L lost a considerable amount of money which was very

distressing for him. I can understand why he would like to be compensated for his loss. And I do accept Mr L has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find HSBC can be held liable in the circumstances of this case. Nor have I found grounds to award the £1,000 Mr L requested for poor service.

My final decision

I am not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 February 2025.

Rebecca Connelley
Ombudsman