

The complaint

Mr B complains that HSBC UK Bank Plc (HSBC) won't refund money he lost in an investment scam.

What happened

What Mr B says:

Mr B was introduced by a friend to an investment firm (which I will call 'firm X') in November 2018.

Firm X was an unregulated Forex scheme which was started in 2015 and promised to return capital within 12 months, plus interest of 5% per month. It paid commission to its introducers. Mr B was given various documents about firm X and the scheme. He made the following payment to firm X – he was told to make it via an accountancy firm. He also received one credit as shown:

Date	Payment	Amount
28 November 2018	Faster payment to accountancy firm	£20,000
17 April 2019	Credit	£1,157
Total loss		£18,843

In late 2018, firm X stopped making payments to investors and in June 2019 a liquidator was appointed. The statement of affairs showed it owed more than £40 million to investors. Mr B says there was an application to the High Court by creditors for compulsory liquidation and the court commented 'there is a strong argument that this is a Ponzi scheme'.

Mr B says firm X was operating a scam and had no way of generating the returns it promised. Mr B lost all his money - which was most of his life savings.

Mr B says HSBC should've done more to protect him. The payment was unusual for him and the bank should've intervened and asked him about it. If HSBC had done so, he wouldn't have made the payment and not lost the money. He says HSBC should refund the money he's lost plus 8% per annum and compensation of £1,000.

What HSBC said:

HSBC said the payment was made before the Contingent Reimbursement Code (CRM) for authorised push payment scams came into effect on 28 May 2019. In June 2019, firm X went into liquidation – HSBC said this is a civil dispute as between Mr B and the investment firm.

Our investigation so far:

In her second view, our investigator said the payment wasn't unusual for Mr B to make and therefore HSBC didn't need to intervene. She declined the complaint in that basis.

Mr B didn't agree. He said there had been one large payment for just over £20,000 in April 2018, but apart from that, there were no other large payments. He asked that an ombudsman look at his complaint and so it has come to me.

I reached a provisional decision which didn't uphold Mr B's complaint:

As a first step, I need to decide whether this was a scam (where a scammer takes money from a customer with no intention of providing any services or returning the money to them) or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

If this was a scam – then banks (including HSBC) must follow industry and regulatory guidance to check certain payments and in some circumstances, protect customers by stopping the payments and contacting them. And where banks haven't followed the guidance, they can be asked to refund them. This is called 'Authorised Push Payments guidance (APP)'.

To give an idea, typical scams are commonly perpetrated by criminals through illegal call centres - for example, scams relating to online banking, or tricking customers into transferring funds to a 'safe account', and romance or investment scams using social media.

But where payments are made to a valid business for work to be done, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Our service has considered whether firm X were operating a scam – in other words, whether it didn't operate any sort of investment business, and had no intention of returning money to investors. In the case of firm X, we took note of the court hearing on 31 July 2020 – when the liquidators and judge were satisfied that firm X operated a Ponzi scheme - where new investors' funds were used to pay existing ones. The judge said there was no evidence of trading after October 2018.

So – our service's view is that this was a scam operation.

Given this, I considered what it's reasonable to have expected HSBC to do in this case.

It's not in question that Mr B authorised and consented to the payments in this case. So although he didn't intend for the money to go to scammers, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr B when he made the payment, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it came into effect in May 2019 – after the payment in question.

If the payment was of a sufficient size and was out of character with how Mr B normally used his account – then we would expect HSBC to have intervened and spoken to him. I looked at Mr B's account, and it's fair to say that the payment was unusual. Mr B's account was used for daily, low value expenditure – with many debit card and contactless payments, but generally for less than £50.

As HSBC and our investigator said - there was one payment for £22,940 in April 2018 and I considered that. But – it is fair to say that this was very much an isolated, one-off payment - and I don't think it is reasonable to consider that as an indication of usual account behaviour.

Therefore, I think it is reasonable to have expected HSBC to have intervened in the payment to firm X – and the bank didn't.

HSBC was the expert in such matters and if they'd intervened, held the payment and contacted Mr B we would have expected them to ask open and probing questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- What returns are you expecting?
- Where did the money come from that you're investing?

But in reaching this provisional decision, I must come to a view on whether Mr B would have been prevented from going ahead. And on balance, I'm persuaded that he would have gone ahead with the payment. I say that as:

He (through his advisors) has evidenced various papers he was sent from firm X. These included:

- Annual and quarterly projections of investment performance for 2017 and 2018;
- Statements about firm X - supporting the amount of funds under management;
- Details of historic returns;
- Key investment characteristics – how returns were generated;

- Communications from firm X about returns on investments being reduced to 3% per month from 5% per month and the reasons why;
- Agenda and minutes of firm X's board meeting, including year to date performance.
- Background and history of firm X;
- Pictures of firm A's premises and trading floor;
- An accountant's advice about the investment in firm X – it is not clear if this if for Mr B's purpose or a general one.
- Firm X was registered at Companies House; and there weren't any online warnings about it at the time.

And - he was introduced to firm X by a trusted friend.

On the other hand, it is fair to also say that:

- the papers say that firm X was not regulated by the FCA.
- the returns of 5% per month were high and probably too good to be true.

It may have been that HSBC (if they'd spoken to Mr B) would have said it wasn't wise to invest with a non-regulated firm, and the returns seemed high - and encouraged him to think again. I must also note that HSBC were not acting as Mr B's investment advisors, so would not have been able to consider the suitability of the investment for Mr B.

But on balance, I consider that the weight of evidence suggests that Mr B would have gone ahead – given the convincing documents and communications he was shown; and that he was introduced to firm A by a friend. In other words, even if HSBC had said the returns were high and questioned investing with a non-regulated firm, I think Mr B would likely have gone ahead.

Recovery: I can see that the liquidation of firm X is still going on – there was a liquidator's report in December 2024 and it appears the liquidators are still evaluating the claims by investors. I would encourage Mr B to ensure he contacts the liquidators to see if any of his money can be recovered.

But other than that, I am sorry that Mr B has lost a lot of money. He's explained why the money was important to him, and the impact his losses have had. He will therefore be disappointed by my provisional decision, which is that I am not proposing to ask HSBC to do anything here.**(continued)**

Responses to the provisional decision:

HSBC agreed with it, but Mr B didn't. Through his advisors he said:

- HSBC should have intervened and asked probing questions.

- Mr B's trust in the scheme was compounded by the misleading documents and by the referral from his friend.
- It is possible that an intervention from a trusted bank would have caused him to think again.
- Given the unregulated nature of the investment, Mr B could have been safeguarded against his loss.
- The loss of £18,843 is a significant amount of Mr B's life savings and the lack of customer protection has caused him irreparable harm. He had lost his life savings.

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 have considered Mr B's complaint and its circumstances again and in the light of his comments. But I'm afraid that on the balance of evidence, my final decision is unchanged from the provisional decision.

I am persuaded that given the amount of documents he was given – and their apparent credibility and authenticity - and the fact that he was recommended the investment by his friend, I believe Mr B would've gone ahead despite any intervention by HSBC. I don't think HSBC could've said anything to convince Mr B that the payment was possibly going to a fraudulent investment scheme.

I am truly sorry that the impact on Mr B is so significant, but I must make a decision based on the balance of evidence I've seen, and for those reasons I am not upholding his complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 February 2025.

Martin Lord
Ombudsman