

The complaint

Mr B has complained about HSBC UK Bank Plc's refusal to refund money he lost to a scam.

What happened

Around September 2021, Mr B became aware of a crypto investment opportunity with a company I'll refer to as "K". He said his partner had previously invested and made good returns. As a result, he decided to invest £60,000, on the understanding he would receive a guaranteed return of 80% after 12 months, which was backed by a director's guarantee.

Between 21 and 23 September 2021, Mr B made three faster payments (£25,000, £25,000 and £10,000 on consecutive days) from his HSBC current account to K's company director, "Mr W".

Mr B said he realised he'd been scammed when he did not receive any returns from the investment and heard from other investors that it was a scam.

Mr B asked HSBC for help recovering his lost funds. While HSBC accepted the payments were covered by the Lending Standards Board Contingent Reimbursement Model Code (the CRM Code'), it concluded Mr B had not taken reasonable steps to check the payments were genuine. It was satisfied it had met the standards required of it to prevent and detect fraud but said that Mr B had provided inaccurate information which prevented the scam from being uncovered. It said it was therefore not required to reimburse Mr B.

Unhappy with HSBC's response, Mr B referred his complaint to the Financial Ombudsman with the help of a professional representative (who I'll refer to as 'R'). Our Investigator didn't uphold the complaint. She was satisfied HSBC had met the standards set out in the CRM Code and had established that a valid exception to reimbursement applied – specifically that Mr B made the payment without a reasonable basis for believing that the payment was for legitimate purposes. She was therefore persuaded HSBC was entitled to refuse reimbursement in the circumstances.

R disagreed on Mr B's behalf and asked that the complaint be referred for a final decision. It argued that Mr B did have a reasonable basis for believing the payment was legitimate, noting that Mr B's partner had received 40% returns. It also considered HSBC ought to have done more to prevent the scam, specifically it should have questioned the answers Mr B gave and had it done so the scam would have come to light.

The complaint has therefore been passed to me to decide.

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.

Having done so I'm not upholding this complaint, and for largely the same reasons as our

investigator. I realise this will come as a disappointment to Mr B, not least because of the amount of money he has lost. But for the reasons I'll go on to explain I don't think HSBC has acted unreasonably in refusing to reimburse him in these circumstances.

Can HSBC be held responsible for Mr B's loss?

When considering what is fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account. There is no dispute here that Mr B authorised the payments – albeit he says he was tricked by scammers into believing his payments were going towards a legitimate investment, but where this turned out not to be the case.

However, where a customer made payments because of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

HSBC has accepted that the CRM Code applies to Mr B's payments. As such, this decision will focus on whether it applied the Code fairly and reasonably in all the circumstances.

The CRM Code, to which HSBC is a signatory, sets out when a firm should reimburse an authorised push payment (APP) scam victim, and it provides increased protection for customers who are the victim of scams. But there are exceptions under the CRM Code that mean even if a consumer has fallen victim to an APP scam and the firm didn't meet the standards required of it, the consumer may then not be due a refund.

So, I've considered whether any of the exceptions to reimbursement apply. I consider the relevant exceptions in this case are around whether Mr B held a reasonable basis for belief that this was a legitimate venture. And whether an Effective Warning by HSBC would've made any difference to what happened here.

Did Mr B hold a reasonable basis for believing he was transacting with legitimate parties for legitimate purposes?

For HSBC to reasonably refuse reimbursement under the CRM Code it must establish that one or more of the exceptions apply. The exception relevant to this case is R2(1)(c):

"In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that:

- i. *the payee was the person the Customer was expecting to pay;*
- ii. *the payment was for genuine goods or services; and/or*
- iii. *the person or business with whom they transacted was legitimate."*

I accept that Mr B believed this was a legitimate investment opportunity. But the test I have to apply is whether or not he held a reasonable basis for believing this.

It's clear there were features of the investment opportunity that Mr B found compelling and

convincing. Mr B has said his partner had previously invested and made returns (although I have seen no evidence of this); he had seen that K was registered on Companies House; he received a contract setting out the terms of the investment and he had met Mr W in person. So, I accept why he had 'belief'. But what I can't safely say is that the evidence shows his decision to invest was founded on a reasonable basis for belief.

Mr B believed the investment would provide him with guaranteed returns of 80% in 12 months. While I accept that the volatile nature of the crypto market *could* result in large returns, it is nevertheless a very high-risk investment and so the suggestion that such significant returns could be guaranteed ought to have been recognised as too good to be true.

While Mr B said that he carried out some research into K and found positive reviews, I have seen no evidence of this and having carried out my own reviews I can find very little information about K, and no positive reviews. Added to this, Mr B was directed to make payments to Mr W, rather than to K's business account. And having made his payments, Mr B received no formal confirmation of his investment; and from his later conversation with HSBC, it seems Mr B was unclear on how his invested funds were due to be used.

Given these concerning factors, I can't see Mr B asked reasonable questions of Mr W or carried out sufficient levels of due diligence into K prior to making a large investment. So, his basis for belief wasn't founded on the level of evidence or information it reasonably should have been.

I think Mr B should also have been concerned when he was advised by Mr W to give false information to HSBC about his payment purpose. While I appreciate Mr B had been led to believe HSBC, and banks in general, did not support the growing crypto market and would seek to thwart investments, I think Mr B should nevertheless have been concerned that he was being instructed to lie to his bank. I think this ought to have been more concerning as HSBC presented Mr B with onscreen investment scam warnings about fraudsters offering "*what appears to be a genuine opportunity with high returns*", it also advised during a fraud prevention call that scammers may coach him not to disclose information. I think this ought to have resonated with Mr B given everything else that was going on.

Overall, I think HSBC has done enough to demonstrate that Mr B didn't have a reasonable basis to believe K was legitimate. So, I find that HSBC is entitled to rely on that exception to full reimbursement under the terms of the Code.

Did HSBC meet its standards under the CRM code

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement may be fairly applied (as I am satisfied HSBC can establish here).

Those requirements include the provision of what the Code defines as an Effective Warning when a firm identifies an APP scam risk in relation to a payment (SF1(2)). But in addition to setting out the standards, the CRM Code also sets out how to consider these standards in the context of a case. It sets out "*The assessment of whether a Firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the APP scam that took place*".

HSBC has evidenced that it identified a scam risk when Mr B instructed his first payment of £25,000. It flagged the payment as higher risk, and asked Mr B to select the reason for the transaction from a set of payment reasons. Mr B initially selected that the payment related to

“Making an investment”. He was then presented with an onscreen warning pertaining to investment scams. HSBC’s records show that Mr B then selected *“Buying goods and services”* as an alternative payment reason and was presented with an onscreen warning relating to purchase scams. HSBC then contacted Mr B to discuss the payment. In this call Mr B told the adviser, on the scammer’s instruction, he was setting up a construction company and someone was building a website and setting up his online marketing. As a result of Mr B’s answers, HSBC’s warning focused on safe account scams and email interception scams as it considered those to be the most significant risks to Mr B at the time.

The CRM Code sets out that *“Effective Warnings should be risk based and, where possible, tailored to the APP scam risk indicators”*. It also sets out minimum criteria that a warning must meet to be an ‘Effective Warning’ and this includes the warning being ‘Clear’, ‘Impactful’ and ‘Specific’.

I appreciate that intervening in the way it did, HSBC took steps to provide an effective warning during the payment journey. But given the value of Mr B’s payment; the fact he’d previously selected his payment related to an investment; and the overall plausibility of his stated payment purpose, I’m not persuaded HSBC’s warning was sufficiently impactful or tailored as required by the CRM Code to constitute an Effective Warning. But I have also had to consider whether HSBC’s failure to give an Effective Warning had a material effect on preventing the APP scam that took place, and I don’t think it did.

It’s evident from the chat transcript that Mr B had placed a lot of trust in Mr W. Indeed, when discussing this investment, Mr B noted that agreeing to increase his investment from £40,000 to £60,000 was *“the biggest amount of trust I have ever given anyone”*. When HSBC did flag the payment for fraud concerns Mr B sought guidance from Mr W on what to say - *“I’m having anti fraud call [...] I put for goods and services...what should I say it’s for”*. He also later discussed other ways of making payments which would likely circumvent any intervention from banks, saying *“I can transfer money to [bank] who don’t ask anything”*.

I can also see that Mr W sold the investment opportunity as a way of moving Mr B’s funds away from traditional banks, which were regularly described by Mr W as a form of *“organised crime”* that tried to disrupt the crypto market to protect its own interests. Mr B seemed to accept and agree with this sentiment.

Given Mr B’s interactions with Mr W at the time, I’m unable to safely conclude that had HSBC asked him more probing questions (as I would have expected it to) Mr B would have revealed the true purpose for his payments, that would have enabled HSBC to provide him with an Effective Warning pertaining to crypto investment scams. But even if HSBC had provided such a warning, I’m not persuaded it would have positively affected Mr B’s decision-making to the extent he would not have gone ahead with the payments. I say this because Mr B seemed to share Mr W’s distrust of banks and I think would most likely have disregarded any additional warnings as unwanted interference and anti-competitive behaviour by his bank.

As such, I’m satisfied that HSBC’s failure to meet the standards expected of it didn’t materially affect the outcome here and so, an exception to reimbursement applies, it’s not required to reimburse Mr B under the Code.

Should Mr B receive a refund from HSBC?

As I have set out above, I don’t believe Mr B is due a refund under the CRM. I consider two exceptions under the CRM apply in this case – R2(1)(c)(iii) – as Mr B did not have a reasonable basis for believing that K and Mr W were legitimately operating an investment business. And R2(2)(a) – as I don’t agree that the omission by HSBC to

provide an Effective Warning impeded Mr B's ability to avoid falling victim to this specific APP scam.

I've then considered whether Mr B is due a refund by any other means, but I don't consider he is. I have already covered above why neither a warning nor a more specific intervention would have prevented him going ahead with the investment, and so I don't think HSBC could reasonably have prevented his loss. And HSBC did attempt to recover his funds, as it was expected to, but was unable to do so as no funds remained in the receiving bank accounts.

In conclusion, I have a great deal of sympathy with Mr B being the victim of what was clearly a sophisticated scam which resulted in him losing a considerable sum of money. But it would only be fair for me to direct HSBC to refund his losses if I thought it was responsible for them, or if it was obliged to refund him under the CRM, but for the reasons I have explained above I'm not persuaded it was.

My final decision

For the reasons given above, my final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 July 2025.

Lisa De Noronha
Ombudsman