

Complaint

Mr K is unhappy that HSBC UK Bank Plc didn't refund him after he reported falling victim to a scam.

Background

The background to this case is well known to both parties, so I don't intend to set it out in full. What follows is a summary of the key facts.

In early 2021, Mr K learned about an investment opportunity with a company I'll refer to as D. He spoke to a representative of D who told him that they used client funds to invest in residential property and generate returns for investors. Mr K was told that he could expect to earn an annual return on his investment of 15%.

Mr K says he conducted some basic online research to satisfy himself he was dealing with a legitimate company. He says its own website had a generally professional look and his online searches didn't yield anything of concern. I also understand that, at one point, he visited D's offices in person and spoke to one of its directors. In Mr K's view, this individual came across as professional and knowledgeable. Mr D was shown evidence of plans the company had for new projects and properties they were in the process of refurbishing. Ultimately, Mr K was persuaded to invest. In March 2021, he invested £40,000.

D has since entered administration. Mr K decided that he must have fallen victim to a scam. He notified HSBC, but it didn't agree to reimburse him. It said it wasn't persuaded that this was a scam. It pointed out that D had been operating legitimately and had managed to pay Mr K the returns that he'd been promised. That all stopped when D entered administration. In HSBC's view, that suggests this was a failed investment, rather than an investment scam. As a result, it didn't think it could reasonably be expected to reimburse Mr K.

Mr K wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in full. HSBC disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point in law is that a bank is generally expected to process payments that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. It's common ground that these payments were authorised and so Mr K is presumed liable at first instance.

However, that isn't necessarily the end of the matter. At the time of the payments, HSBC was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under the CRM Code, firms are expected to reimburse customers who fall victim to authorised push payment (APP) scams, except in a limited range of circumstances.

That obligation, however, isn't engaged unless I'm persuaded that Mr K did indeed fall victim to a scam, rather than having a mere private civil dispute with D. Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

- "(i) The customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

Furthermore, DS2(2)(b) of the CRM Code says it doesn't apply to:

"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

The first question, therefore, that I have to consider is whether Mr K was the victim of an APP scam. To conclude that he was, it must be shown that (a) the purpose for which he made the payments and the purpose for which D procured them were different; and (b) that difference arose due to dishonesty or deception on the part of the recipient. The key issue, therefore, is the intentions of the recipient at the time the payments were made. While I can't know what their intentions were, I have to look at the other available evidence and attempt to infer what their intentions likely were.

There is some limited evidence that suggests D was legitimate. It was a genuine limited company and had registered itself with Companies House as early as March 2016. Evidence seen by this service also shows that, prior to 2019, there were transactions which were consistent with it operating as a property investment scheme. It also appears that it was paying returns to some investors and meeting its tax liabilities by making payments to HMRC.

However, by the point Mr K made his investment, there seems to have been a significant change in its activity. By that point, the evidence suggests that investor money wasn't being used to purchase new properties but was increasingly withdrawn to personal accounts controlled by D's directors.

Furthermore, we've seen evidence showing that investor funds were diverted into an extremely risky investment fund that speculated on the movements of foreign exchange. That wasn't consistent with what investors had been told would happen with their money. That investment scheme appears to have been an APP scam too. The directors of D and the company operating the forex scheme were both directors of a third company. That suggests D wasn't merely a client of the investment firm.

Overall, having carefully considered all the evidence, I'm persuaded D wasn't using investors funds for their intended purpose. Their conduct went beyond simply misleading investors about a genuine investment opportunity. The real purpose of the payments was fundamentally different to that of Mr K and this difference was a consequence of deception on the part of D. As a result, I'm persuaded that Mr K was the victim of an APP scam.

Should HSBC reimburse Mr K?

These payments are covered by the CRM Code, which requires firms to reimburse customers in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies. Broadly summarised, the CRM Code allows a firm to not reimburse its customer if it can show that:

- The customer ignored an effective warning in relation to the payment being made; or

- The customer made the payment without a reasonable basis for believing that the person or business with whom they transacted was legitimate.

HSBC hasn't provided evidence of any warnings shown when any of these payments were made nor has it argued that Mr K ignored an effective warning. As a result, I'm satisfied that exception doesn't apply here. I have also considered whether he acted reasonably when making these payments, and whether there were any warning signs that should have alerted him to the possibility that this was not a genuine investment. On balance, I am satisfied that he had a reasonable basis for believing the investment was legitimate, and I will explain why.

He explained that he carried out some online checks and didn't find anything concerning. That isn't surprising because, as I've noted above, D did have a period when it appeared to be operating legitimately. I also understand that Mr K visited D's offices, and everything he saw suggested it was a genuine company. He could see documentary evidence relating to properties D owned and detailed plans for refurbishing others. Based on what he's said, I think the reasonable person would've concluded D was a legitimate company that was performing well.

He was told he could expect a 15% annual return on his investment. That was certainly more generous than rates typically available to retail investors. However, given the nature of the investment, it's understandable that a more attractive return might have been offered. Considering the other factors I've discussed above, I don't think the interest rate offered should, on its own, have caused him to suspect the investment wasn't legitimate.

Overall, I'm satisfied he made these payments with a reasonable basis for believing he was paying into a legitimate investment. It follows that HSBC should reimburse him under the provisions of the CRM Code.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr K accepts my final decision, HSBC UK Bank Plc needs to:

- Refund the payments he made in connection with the scam, less any returns he received; and
- Add 8% simple interest per annum to those amounts calculated to run from the date it declined his claim until the date any settlement is paid.

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

James Kimmitt
Ombudsman