

## **The complaint**

Mr D complains that HSBC UK Bank Plc declined to reimburse him £7,500 which he says he lost as a result of a scam.

## **What happened**

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, in December 2019 Mr D sent £7,500 to a company which I will call 'A'. A claimed to be an algorithmic sports betting investing company. It said it used artificial intelligence to capitalise on the sports betting market, and said he would receive a revenue of about 1-2% compound interest each month. He discovered the company through a cold call, but learned they were due to be at an exhibition event which he then attended. He met the directors in person, and went to their offices in two locations. He met other investors and members of staff, received a contract and prospectus, and other documentation relating to the investment opportunity. Unfortunately, Mr D said he realised he had fallen victim to a scam when he was contacted by the police. The Crown Prosecution Service have authorised charges against the directors for a variety of fraud and financial crime offences.

Mr D got in touch with HSBC to ask it to reimburse his losses. HSBC looked into things, and declined to reimburse him. It said that the payment was not covered by the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code, and so it did not need to provide reimbursement.

Mr D was not satisfied with HSBC's response, so he escalated his concerns to our service. One of our investigators looked into what had happened, and recommended that Mr D's complaint should be upheld. They felt there was enough evidence to suggest that Mr D had fallen victim to a scam as defined in the CRM Code, and so HSBC ought to refund Mr D's losses along with 8% simple interest from the date it had declined Mr D's claim under the CRM Code.

HSBC did not agree. It said that it fundamentally disagreed that we could reach these conclusions before the criminal investigation had reached its conclusion, relying on R3(1)(c) of the CRM Code. Our investigator said that this would not apply in this case, but HSBC still did not agree with our investigator's recommendations. It also said that no warning was given, but that due to the relatively recent account opening, which took place five months prior to the payment, it did not deem the transaction as out of character such that intervention was warranted. As no agreement could be reached, the case has 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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services

Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

HSBC is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM code), which is of particular relevance in this case. This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

So, I must first consider whether this should fairly be applied in this case. If I do not think this should be applied, in order for me to conclude whether the CRM Code applies in this case, I must consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as: "Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs 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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent"

The CRM Code is also clear at DS2(2)(b) that it does not 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"

If I conclude that the payment here meets the required definition of a scam then Mr H would be entitled to reimbursement, unless HSBC has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So, in order to determine Mr H's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that he was the victim of a scam rather than this being a failed or bad investment.

*Are HSBC entitled to rely on R3(1)(c) in this case, to delay making a decision under the CRM Code?*

The CRM Code says firms should make a decision on whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to an investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c) to wait for the outcome of that investigation before making a reimbursement decision. After the investigator issued his assessment of this case, HSBC told our service it considers that R3(1)(c) applies in this case.

Where a firm already issued a reimbursement decision, for example by telling the consumer they would not be reimbursed because they did not meet the requirements expected of them under the Code, or because the CRM did not apply in their case, then R3(1)(c) has no

further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that “*a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code*”. The Financial Ombudsman Service does not have the power to restart R3(1)(c) - so where a firm has made a reimbursement decision, a consumer is entitled under the DISP rules to ask our service to decide the merits of the complaint about the payment they made fairly and reasonably and on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code. HSBC had already reached a decision on Mr D’s claim as in its correspondence with Mr D in November 2024 it said that his claim was not covered by the CRM Code because it was deemed to be gambling – rather than fraudulent. It also would have had to tell Mr D that it was relying on this provision – which it did not. Therefore it cannot seek to delay a decision it has already made, and cannot rely on R3(1)(c) here.

#### *Has Mr D been the victim of a scam, as defined in the CRM Code?*

HSBC have said that Mr D was paying towards gambling, rather than an investment scam. I do think that Mr D was the victim of an investment scam, rather than simply a gambling transaction which has not gone his way. I say this because having reviewed the evidence available to me, it was sold as an investment opportunity utilising artificial intelligence. Since Mr D’s investment, the CPS have authorised charges against the directors of A, which the relevant police force have said are in connection with an investment scam. The offences charged included conspiracy to defraud, fraud by false representation, and an offence of carrying on business of a company with intent to defraud creditors for other fraudulent purpose. They are further charged with money laundering. Whilst I do appreciate HSBC’s position that this is not conclusive as the trial has not yet happened, the CPS test includes that there is a realistic prospect of prosecution, which is a high bar.

I have also been able to see information about the receiving accounts for A, and whilst I cannot go into much detail for data protection reasons, it is clear that the money was not being used as it had been said to be used in the investment literature. I have not seen evidence that the money from investors was invested. And there is evidence that funds went to the directors themselves. There have also been numerous fraud reports made to the receiving account banks.

So, considering all of the evidence available to me, I do think that it is fair and reasonable to assess this case under the provisions of the CRM Code.

#### *Is Mr D entitled to a refund under the CRM Code?*

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr H. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the code outlines those exceptions, and I have outlined the potentially relevant ones above. One such circumstance might be when a customer has ignored an effective warning. A second such circumstance in which a firm might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

#### *Did Mr H ignore an effective warning?*

By HSBC’s own admission, it did not provide an effective warning. It said this was because it did not think that the payment was sufficiently out of character for Mr D’s account to warrant any intervention. As no warning was provided, it follows that it would not be fair or

reasonable for them to rely on the exception to reimbursement that Mr D ignored an effective warning.

*Did Mr D have a reasonable basis for belief that he was paying a legitimate investment company?*

I have carefully considered both parties submissions to consider whether I think that it would be fair to allow HSBC to rely on the exception to reimbursement that Mr D acted without a reasonable basis for belief that he was paying into a legitimate investment. But I am not persuaded that Mr D failed to demonstrate the requisite level of care required for HSBC to choose not to reimburse him under the provisions of the CRM Code. I don't think that Mr D lacked a reasonable basis for belief.

Whilst I appreciate that discovering the opportunity through a cold-call should have given some cause for concern, I think Mr D's and A's actions afterwards would have reduced any concerns. Mr D spoke to the directors and met with them multiple times. He went to their offices in two locations, which would have made them appear legitimate. He met them at an official exhibition event in a large, official venue, which would have added to their credibility. He also met with other investors. I have seen some of the investment literature A provided Mr D, and it appears professional and in-keeping with what one might expect an investment company to offer. This included contracts, a prospectus, as well as promotional and informative literature. He was also provided with seven years of A's 'track record'. Mr D found that they were on Companies House and looked them up on review sites, and found nothing of concern. The returns offered were not without any risk, and whilst generous were not so large as to be too good to be true.

On balance, I am satisfied that when considering all of the circumstances, Mr D's decision to make the payment was not unreasonable. I believe that Mr D believed he was dealing with a legitimate investment company which had a proven record of success. Mr D was not alive to the possibility he was dealing with fraudsters, and this is another reason why I don't think he acted unreasonably by engaging with A and making the payment.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I am not satisfied HSBC has been able to establish that when Mr D sent the payment he did so without a reasonable basis for belief.

### **Putting things right**

The Code explains that where a customer has met their requisite level of care (which as I have explained, I am satisfied was the case here) they should be refunded all of the money that was lost. So I think it is fair that HSBC should:

- Refund Mr D's losses from the scam in full; and
- Pay 8% simple interest from the date they declined to refund Mr D under the CRM Code until the date of the settlement.

As A is going through criminal proceedings, it is possible Mr D could recover some further funds in the future. In order to avoid the risk of double recovery, HSBC is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

### **My final decision**

I uphold this complaint and require HSBC Bank UK Plc to refund Mr D's losses in full, along with 8% simple interest from the date it declined his claim under the CRM Code until the

date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 January 2026.

Katherine Jones  
**Ombudsman**