

The complaint

Mr S complains that HSBC UK Bank Plc did not reimburse the funds he lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Mr S worked for an investment company I'll refer to as 'X' between June 2022 and January 2023. He then decided to invest in the company himself, along with his brother, and together they invested £12,000. Of this, Mr S personally invested £10,000 on 29 March 2023 and £600 on 23 June 2023. Eventually, the director of X admitted to fraud and handed himself into the police as he said the trades X carried out had been fabricated.

Mr S raised a scam claim with HSBC for the £10,600 however they felt this was a civil dispute and did not meet the criteria for a scam. Mr S referred the complaint to our service and our Investigator looked into it. They issued a view explaining that they felt the payments met the criteria of a scam under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They felt Mr S had a reasonable basis to believe the investment was genuine, and HSBC had not provided evidence to show it gave Mr S an effective warning when he made the payments. So, they felt a full reimbursement was due in the circumstances.

The Investigator noted that following the scam payments, Mr S received a number of credits into his current account, which he says were largely commission payments from working for X. However, there was no evidence to substantiate what the commission was and as Mr S could not demonstrate the credits into his account were not related to the investment, the Investigator felt all payments received by Mr S from X after January 2024 should be deducted from the refund. They also said HSBC should pay 8% simple interest from the date the claim was declined.

HSBC disagreed with the outcome and felt they were entitled to rely on section R3(1)(c) of the CRM code, which allows a business to await the outcome of an investigation by, in this case, law enforcement. The case was passed to me for review and I issued a provisional decision in which I agreed with the Investigators reasoning, but I recommended an amendment to the redress. Mr provisional decision read as follows:

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that an investigation is still ongoing into X's activities.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available.

In order to determine Mr S's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr S was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I also need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr S an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the any investigations for me fairly to reach a decision on whether HSBC should reimburse Mr S under the provisions of the CRM Code.

Has Mr S been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr S authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

HSBC has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...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 explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

This Code does not apply to:

- b) 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.*

I've therefore considered whether the payments Mr S made to X fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to X, which suggest to us it is more likely they were carrying out a scam. Specifically:

- The investment company would have required FCA authorisation in order to give the financial advice and to provide the trading platform consumers were relying on as part of their investment. As they weren't authorised and regulated, it suggests this was a scam. There is also an FCA warning posted regarding the company.*
- The returns that were promised were unrealistic and too good to be true, which is indicative of a scam.*
- Receiving bank evidence shows very little of consumers' funds were being used as X had claimed. In fact, the number and value of incoming payments entering the account far exceeds any payments that can be directly attributed to investing platforms.*

Considering all of the above, I do not think X was using investor funds, such as Mr S's £10,600, for the purpose they were intended for. And I think this difference in purpose is

down to dishonest deception on X's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Is Mr S entitled to reimbursement under the CRM Code?

I've considered whether HSBC should refund Mr S under the provisions of the CRM Code. Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

HSBC has not provided any arguments as to why it feels Mr S did not have a reasonable basis to believe the investment was genuine. On balance, I think it is more likely he did, as he had previously been employed by X and had spoken with the director on many occasions. I therefore think it is unlikely he would have any reason to doubt his previous employer was running a scam operation, especially as he willingly invested in the company.

HSBC has provided no evidence that it gave Mr S an effective warning when he made the payments in question, so I have seen nothing to indicate he ignored an effective warning. I therefore do not think an exception to full reimbursement applied in the circumstances.

It follows that I think HSBC should reimburse Mr S in full under the CRM Code, less any returns he received.

Did Mr S receive returns?

Mr S has provided some evidence to our service, including some screenshots of X's internal systems and the mobile app he used for both his employment and the investment. I've also looked over his contract with X, some payslips, his current account statements and his testimony to determine what his likely loss is.

There were a number of credits into Mr S's HSBC current account from X, and I will set these out below:

Date	Amount (£)
01/06/22	1,765.03
01/07/22	1,974.63
29/07/22	1,794.85
01/09/22	1,794.65
30/09/22	1,794.65
01/11/22	1,794.65
01/12/22	1,808.83
01/01/23	1,808.83
20/09/23	250
08/11/23	1,200
04/12/23	1,570
10/01/24	1,000
26/01/24	605
06/02/24	300
19/02/24	1,000
14/03/24	700
19/03/24	300
03/04/24	1,000
19/04/24	300
21/04/24	1,000
02/05/24	1,000

Mr S says he worked for X between June 2022 and January 2023, and has provided some payslips to corroborate this. The payments he received from X during this period were for relatively similar amounts and I am satisfied these represent his monthly salary from X.

Following this point, Mr S stopped working for X and then made the investment of £10,000 in March 2023 and a further £600 in June 2023. The investment agreement he signed with X stated he could not make any withdrawals from the investment for the first six months. Six months after the initial investment of £10,000, Mr S received a £250 credit into his current account from X. I think it is more likely this represents a return from the investment, as Mr X was not employed by X at the time.

Mr S says he went back to work for X in November 2023 and continued to work for them for just two months until January 2024, however I have seen no evidence to confirm this, such as payslips or an employment contract with X. The credits into Mr S' current account during this period vary significantly in value and are not consistent like the credits between June 2022 and January 2023. Following that point, when Mr S says he no longer worked for X, he says he was allowed to continue trading on a commission only basis. Again, the value of the credits from January 2024 onwards vary significantly and are also all rounded numbers which is unusual for a percentage commission-based structure.

Mr S has said he would receive a percentage of commission from the profits made from his analysis within the company as well as a percentage of the trades he placed. In addition, he would talk with potential clients and show them the portfolio of the trader's team and pass them to the director if they were interested. He has not provided any documentation showing what the agreement he had with X was around commission. And the screenshots he has provided setting out commission payments to him on X's app mostly do not relate to dates that he worked for X, as they all fall between May and December 2023. With this in mind, it is very difficult to determine which of the credits into his account relate solely to commission earned while working for X.

Mr S has said that the investment contract he signed gave him 3% returns per calendar month on the investment he made, and he provided the calculation of 3% of £10,000 to mean he would receive £300 per month. He therefore indicated that the credits of £300 per month were related to returns, but anything over that would be related to commission. However, one screenshot Mr S provided which appears to be related to his investment shows that he and his brother invested a total of £12,750, meaning an even 3% return would not be £300.

I am therefore unable to determine exactly what credits to Mr S's HSBC account from X following the investment are related to returns on his investment. With no evidence confirming Mr S went back to work for X, what that potential employment entailed, what any agreement for commission looked like or any indication of what credits into his account were specifically for returns, I think the fairest course of action is to treat all credits into Mr S's current account from X following the investment as returns. It follows that the remaining loss I think HSBC should reimburse is £375.

HSBC responded to the provisional decision explaining it did not agree with everything I had said, but they agreed to the recommendation set out in it.

Mr S responded and did not agree with my findings in relation to the redress. He reiterated that any amounts into his account that exceeded £300 were in relation to his commission from working for X and were not related to his returns on the investment. He also confirmed he had a 60/40 profit split from the trades he placed via X and he earned a commission of 0.5% to 1% on the investments of clients he onboarded. He again highlighted the commission set out in the X app which he no longer has access to and explained his commissions continued even after his termination for underperformance.

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've carefully looked over Mr S's additional comments, as well as the evidence he provided. The only issue remaining that has not been agreed is the redress, specifically the separation of any wages or commission he may have earned working for X from any possible returns on his investment.

I've looked over the investment agreement between Mr S, his brother and X. This states there would be a fixed monthly rate of return of 3% on the £12,000 investment and this would be fixed for 12 months. It also projected total assets of over £17,000 in 12 months and £24,393.53 in 24 months.

Mr S has said any credits into his HSBC account over £300 would be related to commission and not his returns, which he said was set at 3% as mentioned in the investment agreement. He has indicated the following credits to his HSBC account align with returns on his investment: £250 + £605 + £300 + £300 + £300 = £1,755 of returns. However, there are inconsistencies within this.

Firstly, I have to acknowledge that 3% of £12,000 is £360 and not £300, and in any event the amounts Mr S has highlighted as 'returns' are not consistent in either value or the date they credited his account. It also appears no returns were withdrawn to Mr S's HSBC account in the first six months meaning it is possible returns accrued in that time in the investment account and could be withdrawn later. The issue here is that I do not have a breakdown of the investment account showing what interest accrued, how much returns were received and how much was withdrawn to Mr S's current account with HSBC.

Mr S has also attempted to further breakdown his commission agreement with X, which he said was largely verbal. The employment agreement I have seen does not set out a breakdown of how any commission worked, or even if any specifically would be received. Mr S has provided screenshots of the app X provided which he no longer has access to, and this shows a tab that looks like a statement labelled 'commission'.

Mr S has suggested this shows the commission he received, but as mentioned in my provisional decision there is no correlation between the dates and the values of these payments and the credits he received into his current account with HSBC. These show that in the gap between Mr S's periods of employment with X he earned £2,070 in commission, however in this time there was only one credit to his HSBC account of £250. Despite these periods of unemployment, Mr S says he continued to receive commission due to him introducing people to the investment, but again there is no correlation between the screenshots he has provided and what has credited into his current account. With this in mind, I again do not think the evidence I have been provided helps me to understand what Mr S's potential loss is in relation to the investment.

Mr S has set out that he received a percentage commission for introducing individuals to X based on the amount they invested, and a number of these individuals are now attempting to recover their funds from their banks. I think there is a potential issue here in Mr S profiting financially from introducing individuals to what is now known to be a fraudulent scheme. But in any event, I do not have any clear evidence to show what the credits into Mr S's account after he made the investment with X are. I have no employment agreement between himself and X for this period, no wage slips showing what he claims to have been paid, no clear breakdown of how any commission he may have been paid works, and the evidence I have been provided that seems to relate to commission does not tie in with the credits into his

HSBC account. Finally, I do not have an investment statement to show what the investment accrued and what returns were paid and when.

I am therefore in the difficult position of trying to assume what Mr S's potential loss could be. While I do appreciate the difficult position Mr S is in financially, I have to base my outcome on the evidence available to me. With nothing clearly indicating what the credits into his account were, I am still of the opinion that the fairest course of action is to treat all credits into Mr S's current account from X following the investment as returns. It follows that the remaining loss I think HSBC should reimburse is £375.

Putting things right

HSBC should now pay Mr S £375 along with 8% simple interest from the date of the declined claim, less any lawful tax.

My final decision

I uphold Mr S's complaint in part and direct HSBC UK Bank Plc to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 October 2025.

Rebecca Norris

Ombudsman