

## The complaint

Mr and Mrs O complain that HSBC UK Bank Plc hasn't reimbursed the funds they say were lost to a scam.

## What happened

Mr and Mrs O hold a joint account with HSBC. They say that in 2018 they were introduced to an investment opportunity with a company I'll call B in this decision. Directors of B claimed to have developed an algorithm that allowed them to trade at a superior rate and achieve profit of 50% a year. After visiting B's offices Mr and Mrs O invested an initial £30,000 on 17 October 2017 followed by another £30,000 on 25 January 2018. I have not seen the initial agreement for October 2017 but I have seen one for the January investment. They sent a further £90,000 in June 2018 and I've seen the managed account agreement for this amount.

In February 2020, Mr and Mrs O invested a further £100,000 to B, though I have not seen the agreement for this. They went on to invest a further £180,000 on 24 November 2021 and this payment went to an accounting firm. I have seen the loan agreement between Mrs O and B in which she agrees to lend them £180,000 with the understanding she would receive £234,000 12 months later. This therefore represented interest of 30% on the loan. HSBC has shown that between February 2020 and July 2021, Mr and Mrs O received £63,500 in returns from B's various accounts.

Mr and Mrs O didn't receive any further returns from B. Since then, B has gone into administration and there is an ongoing police investigation into them. Mr and Mrs O instructed a representative to send HSBC a letter of complaint in February 2024. Mr and Mrs O said that B operated a Ponzi scheme for a variety of reasons including the fact B wasn't FCA regulated when it should have been, the contracts offered returns that were too good to be true, and managed funds agreements said that only 10% of invested funds were at risk. Mr and Mrs O said HSBC should reimburse relevant payments under the Contingent Reimbursement Model Code ('CRM Code'), which only includes the £100,000 payment on 25 February 2020 and the £180,000 payment on 24 November 2021.

HSBC said there was insufficient evidence to conclude that Mr and Mrs O were the victims of a scam because they paid a legitimate company and received significant returns, so they felt this met the definition of a civil dispute. Mr and Mrs O were unhappy with HSBC's response and brought a complaint to this service.

Our Investigator looked at the complaint and considered the payments under the CRM Code. They felt Mr and Mrs O were victims of an APP scam as defined in the CRM Code and HSBC couldn't fairly apply an exception to reimbursement, so HSBC was responsible for their full loss after taking into account credits from B. Profits from both investment payments were deducted, meaning that the investigator recommended that HSBC pay Mr and Mrs O £216,500 plus interest.

Mr and Mrs O agreed with the findings however HSBC did not. They felt our service should either await the outcome of the police investigation or dismiss the case. And they said that as the second payment went to an accounting firm and not B directly, it would not be covered by the CRM Code.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

### **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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a building society such as HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. In law, Mr and Mrs O are responsible for payments they have authorised.

#### *Is it appropriate to determine this complaint now?*

HSBC has said it needs evidence from a police investigation to determine if B was operating a scam. So, I have considered whether it would be appropriate to delay my decision in the interests of fairness.

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. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

In order to determine Mr and Mrs O'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 and Mrs O were the victims 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'm aware that Mr and Mrs O first raised their claim with HSBC in February 2024 and I 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 and Mrs O 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.

I'm aware external processes might result in some recoveries for B's creditors/investors; in order to avoid the risk of double recovery, I think HSBC would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr and Mrs O under those processes in respect of this investment before paying anything I might award to them in this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for any police (or other) investigations to be completed for me fairly to reach a decision on whether HSBC should reimburse Mr and Mrs O under the provisions of the CRM Code.

### Have Mr and Mrs O been the victims of an APP scam as defined by the CRM Code?

HSBC has signed up to the CRM Code, which provides 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 in all but a limited number of circumstances. The CRM Code applies to authorised push payment (APP) scams which are defined as:

- (a) *...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.*

To decide whether Mr and Mrs O are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs O thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs O understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs O thought their funds would be used for general investment purposes as set out in the loan agreement. I haven't seen anything to suggest that they didn't consider these purposes to be legitimate.

I've gone on to consider what purpose B had in mind and whether it was in line with what Mr and Mrs O thought.

The investigator set out why he thought B operated a scam. I agree with his findings. Broadly, B received around £28m in investment capital from investors with loan agreements or managed funds agreements. Of that £28m, less than 17% was invested with around £4.1m being returned. This indicates a huge trading loss, yet around £19m was paid out to investors. Overall, I think it more likely than not that B operated a Ponzi scheme.

Mr and Mrs O were offered rates of return of 30%. There is no evidence to demonstrate that B was successfully trading and was able to generate such substantial profits. B also wasn't regulated by the FCA as it needed to be to undertake the activities claimed. As a private investment fund, B should not have solicited investments from retail investors or the general public as it did.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. There is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

### Application of the CRM Code

Firstly, HSBC has argued that the second payment is not covered by the CRM Code as the funds went to an accounting firm and there is no evidence showing they went onto B. However, I have seen the agreement between Mr O and B stating the £180,000 was a loan to B, so I think it is clear the intention of the transfer was to ultimately send the payments to B. In addition to this, I am satisfied the accounting firm is linked to B, and on balance I think both the £100,000 and the £180,000 payments are covered under the Code.

The CRM Code says that Mr and Mrs O are entitled to a full refund unless HSBC can establish that an exception to reimbursement applies.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

There are further exceptions outlined in the CRM Code, but they don't apply to this case.

*Did Mr and Mrs O have a reasonable basis for believing the investment was genuine?*

Having carefully considered the evidence I'm not persuaded HSBC could fairly apply this exception to reimbursement for the following reasons:

- Mr and Mrs O were introduced to the investment opportunity by a partner within B, who was an old colleague of Mr O. They were aware of other investors who had received guaranteed returns.
- Mr and Mrs O visited B's office before deciding to invest and met the directors, who appeared to be knowledgeable and professional.
- Mr and Mrs O viewed B's website, which they say was professional. They also say they were asked for ID documents, which is what they would expect of a genuine investment.
- Mr and Mrs O signed contracts which set out the terms of their agreement with B.

I'm also not satisfied that HSBC has demonstrated Mr and Mrs O ignored an effective warning when the payment was made. It has provided telephone calls with Mr O when both of these payments were made, but no effective warnings were provided in the calls. Under the provisions of the CRM Code, this means that HSBC should reimburse the transactions covered by the code in full (subject to what I say below).

### **Putting things right**

As there is an ongoing police investigation, it's possible Mr and Mrs O may 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 the rights to all future distributions under the liquidation process in respect of the investment before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr and Mrs O for their consideration and agreement.

I can see that Mr and Mrs O received money back that they understood to have been 'profit/return' from their investment. Given Mr and Mrs O were falling victim to a scam and their 'investment' wasn't genuine, I don't think this money should be attributed to any specific payment. Instead, I think this money should be deducted from the amount lost by apportioning it proportionately across all of the payments Mr and Mrs O made to the scam. This ensures that these credits are fairly distributed.

To work this out, HSBC should take into account all of the payments Mr and Mrs O made to the scam (including those from other businesses), which I have set out in the table above.

In this case, the 'profit/returns' received equals £63,500 and the total amount paid to the scam equals £280,000. HSBC should divide the 'profits/returns' by the total amount paid to the scam. This gives the percentage of the loss that was received in 'profits/returns'.

Deducting that same percentage from the value of each payment after and including payment two gives the amount that should be reimbursed for each payment.

Here the 'profit/returns' amount to 22.68% of the total paid to the scam. It follows that the outstanding loss from each payment should be reduced by the same percentage. That means HSBC should reimburse 77.32% of each payment. Please note that, for ease of reading, I've rounded the relevant percentages down to two decimal places.

After taking the steps set out above, I calculate Mr and Mrs O's outstanding loss from these payments to be £216,500. HSBC should also add 8% simple interest from 15 days after the claim was received to the date of settlement.

### **My final decision**

I uphold Mr and Mrs O's complaint and recommend HSBC UK Bank Plc pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O and Mr O to accept or reject my decision before 5 December 2025.

Rebecca Norris  
**Ombudsman**