

The complaint

Ms M's estate complains that HSBC UK Bank Plc will not refund the £150,000 they say Ms M lost to a scam.

What happened

Ms M knew an individual I will call X, he had previously acted as her estate agent in a property sale, and she had known him for several years. X told Ms M about an investment opportunity, and in November 2020 she signed a Memorandum of Understanding confirming that she would pay £150,000 to X which he would invest on her behalf. The agreement was that X would return Ms M's money a year later with interest.

Unfortunately, at this time Ms M was terminally ill, and she passed away in February 2021. The administrators of her estate became aware of this payment to X and believe that X acted dishonestly to take advantage of Ms M's circumstances and to scam her out of this money. The estate did communicate with X but Ms M's money was not returned, and neither were any profits on the investment.

A representative of Ms M's estate began court proceedings against X. X did not attend those proceedings, and in his absence a judgment was made against him that he should return Ms M's money to her estate, plus interest. Unfortunately, X has not complied with the judgment.

Ms M's estate therefore raised a scam claim with HSBC regarding the payment Ms M had made. HSBC's position is that this matter is a civil dispute between Ms M's estate and X, it therefore does not accept that it has any liability for Ms M's loss.

On reviewing the complaint, our Investigator agreed that it was more likely a civil dispute between Ms M's estate and X. On balance, they did not think the evidence showed that X dishonestly deceived Ms M about how her money would be used. So, they did not think we could safely say that this was a scam rather than a civil dispute, and therefore didn't think HSBC needed to refund Ms M's loss to her estate.

Ms M's estate disagreed with the findings, they maintain that X was not acting legitimately. 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.

Ms M's estate and representatives have provided detailed submissions to our service in relation to this complaint. But I will focus in this decision on the points that I consider to be material to the outcome of the complaint, rather than responding to every single point made.

I mean no disrespect by this, but I feel this is in keeping with our role as an informal dispute resolution service. I nonetheless want to assure all the parties involved here that I have carefully considered everything that has been submitted.

Firstly, it isn't in dispute that Ms M authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she was liable for the transaction. But her estate believes that she has been the victim of an authorised push payment (APP) scam.

HSBC signed up to the voluntary CRM Code, which provided additional protection to scam victims at the time this payment was made. Under the CRM Code, the starting principle was 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 out the definition of an APP scam in the CRM Code 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 Code also explains 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.*”

I've therefore considered whether the payment Ms M made to X falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Ms M was the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes of Ms M and X were broadly aligned and, if not, whether this was the result of dishonest deception on the part of X.

Based on the evidence available to me, it appears Ms M was intending for her funds to be used to invest in FTSE100 companies. She then expected to receive returns on her investment of 8%. Ms M signed a Memorandum of Understanding setting out this agreement with X. So, I see no reason why Ms M would not have thought this was a legitimate investment.

I've gone on to consider whether X's intended purpose for the payment aligned with what Ms M intended as set out above. I've seen evidence that funds which appear to match up with Ms M's payment to X were then sent on to a third-party business which operated as a share dealer. It therefore appears that Ms M's funds were used to invest, as she had been told they would be. I acknowledge that X does not appear to have been authorised by the FCA, but I don't think that definitively means that he was not acting legitimately or not doing

what he had told Ms M he would be doing. So, it seems, based on the evidence we have, that Ms M's funds were used for the purpose she had intended.

I acknowledge that there may be some argument as to whether X ever intended to return Ms M's capital or profit to her, but I don't consider that the evidence we have gives us any real clarity on that issue. I also acknowledge that X has refused to engage with Ms M's estate regarding this money, and did not attend court to defend his position, and that certainly could indicate that he was not acting legitimately, but there could be a number of explanations for why this has happened, and I don't think anything we have seen gives us any definitive answer regarding his motivations.

I also note that while this matter was reported to the police, the police declined to pursue it, stating that there was no viable line of enquiry.

I do agree that X appears to have acted unprofessionally, and that his actions since Ms M's death are questionable, but I don't think that means that *at the time this payment was made* we can say that he did not intend to honour his agreement with Ms M. Someone may act unprofessionally but still be acting legitimately, or subsequent events may mean that they cannot or will not meet their agreed obligations.

On balance, I think it is more likely X's intended purpose for the funds aligned with Ms M's and nothing I have seen clearly indicates to me that X intended to defraud her. And while I acknowledge that Ms M's health at the time meant she was in a very vulnerable position, I don't think that changes my findings here. So, I don't think Ms M's circumstances meet the definition of an APP scam. It follows that I do not consider HSBC can reasonably be held liable for Ms M's loss under the CRM Code.

I acknowledge that my findings will be disappointing, but I cannot fairly say – based on all the evidence I have seen – that it would be fair to ask HSBC to refund Ms M's loss to her estate.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms M to accept or reject my decision before 11 December 2025.

Sophie Mitchell
Ombudsman