

## The complaint

Mr S complains that HSBC UK Bank Plc won't reimburse him after he lost money to an investment – that he now considers to have been a scam.

## What happened

Mr S has explained that he was introduced to an investment opportunity, provided by a firm that I'll refer to as T, by a close friend who had completed some work on the director of T's home. Mr S has explained that the director lived nearby to him, had done Mr S a favour in the past, was well known in the area and that they had mutual acquaintances. Mr S was aware that some of these mutual acquaintances, and others in their local area, had invested with T and that their investments were performing well, receiving profits. On this basis, Mr S decided to contact the director for more information. Mr S has explained he attended the director's home to discuss the investment in more detail and was shown live forex trades on the director's computer monitor. The director told Mr S he had developed automated trading systems and that this allowed him to carry out a significant number of trades in a short space of time. Mr S also researched T online and found it was a registered firm on Companies House.

Encouraged by what he had seen, Mr S confirmed he wished to invest and, upon receiving and signing a contract with T, sent his investment funds in June 2021 across three payments of £25,000, £25,000 and £10,000. Payments were made on three consecutive days due to Mr S' transfer limits and were sent to an account in T's name. On the contract between Mr S and T, the director personally guaranteed the initial investment made. Other than this initial guarantee, Mr S wasn't given a specific rate of return to expect from his investment.

Mr S explained that he received weekly reports confirming how his investment was performing, and it appeared to be receiving good returns. However, he was then contacted by a family member (who by this point had also invested) who stated they'd received contact from the Police regarding the investment. Mr S tried at this time to make a withdrawal but never received any funds. Since this time, Mr S has also received contact from the Police, advising T is under investigation.

Mr S complained to HSBC, but HSBC didn't consider it was liable to reimburse him. It said that as T was a genuine firm registered on Companies House that had since dissolved, this was a civil dispute between Mr S and T. However, it acknowledged delays in providing an answer and providing conflicting information to him. HSBC awarded Mr S with £150 compensation to apologise.

HSBC also said that when Mr S made the payments online, he was asked the purpose for his payment. As Mr S selected 'making an investment', HSBC said he would've seen the following warning:

*'This could be a scam*

*Fraudsters can offer you what appears to be a genuine opportunity with high returns. They can try to pressure you to invest your savings or transfer your current pension to a new scheme.*

- *Take time to talk to someone you trust who is not involved with the investment*
- *You must independently research who you're sending money to*
- *Check the company is genuine and authorized by the Financial Conduct Authority by visiting [FCA website link]*
- *Company names can be cloned. It's vital you contact the company on an independently verified number*

*Visit our Fraud Centre to find out more.*

*By choosing continue, you agree you've read our warning and are happy to proceed. You accept we may not be able to recover your money if it's sent to a fraudster's account.'*

An investigator considered the complaint and upheld it. She said on balance this was a scam and covered by the Contingent Reimbursement Model (CRM) Code and that none of the exclusions HSBC had relied on applied – so HSBC should reimburse Mr S in full.

In its response to our view, HSBC stated that it is awaiting industry guidance regarding T and doesn't consider it's possible to determine an outcome without a confirmed Law Enforcement position.

As HSBC disagreed with the investigator's outcome, the complaint has been referred 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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in 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). This requires firms to reimburse customers who have been the victims of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

#### *Can HSBC delay making a decision under the CRM Code?*

HSBC has suggested it's not possible to determine an outcome on Mr S's complaint without a confirmed Law Enforcement position. There is an exception under the CRM Code (R3(1)(c)) that states that firms should make a decision as to whether or not to reimburse a

customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

While this exception provides a reason why firms *may* delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so. Additionally, this exception needs to be raised by the firm, prior to it having reached an outcome on the claim under the CRM Code, which HSBC hasn't done in this case.

I've therefore gone on to consider below whether we do have enough evidence to proceed at this time on Mr S's complaint.

*Is it appropriate to determine Mr S's complaint now?*

I am aware there is an ongoing investigation, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which – as explained above – is the balance of probabilities).

The Lending Standards Board 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 S'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 Mr S was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Mr S's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available.

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

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mr S has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and T intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of T.

From what I've seen and what Mr S has told us, I'm satisfied Mr S made the payments with the intention of investing in forex trading. He thought his funds would be used by T to trade and that he would receive returns on his investment.

But I think the evidence I've seen suggests T didn't intend to act in line with the purpose for the payments it had agreed with Mr S.

Mr S made his payments to an account held in T's name. I've reviewed beneficiary statements for these accounts and while I can't share the details for data protection reasons, the statements do not suggest that legitimate investment activity was being carried out by T at the time Mr S made the relevant transactions. Whilst there is evidence T initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. T and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't.

Further concerns centre around the owner of T (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of T despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, T was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in T, I am satisfied that it is more likely T was not acting legitimately, since its intentions did not align with Mr S's intentions, and I am satisfied that T was dishonest in this regard. It follows that I'm satisfied Mr S was the victim of a scam.

*Is Mr S entitled to a refund under the CRM code?*

HSBC is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for HSBC to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

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

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- 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 services; and/or the person or business with whom they transacted was legitimate

*\*Further exceptions outlined in the CRM Code do not apply to this case.*

*Did HSBC meet its obligations under the CRM Code and did Mr S ignore an effective warning?*

I've considered the warning referenced earlier in my decision, that HSBC has said it provided to Mr S. However I don't consider it to be 'effective' under the CRM Code. For a

warning to be considered effective, the Code requires it to be (among other things) impactful and clear. I don't think this warning met these criteria – it doesn't cover most of the key hallmarks we see in these scams in order to have had a meaningful impact to Mr S and cause him to question the payments he was making.

In any event, under the CRM Code, an effective warning is a minimum requirement where a scam risk is identified. In this case, the payments Mr S made towards this scam were significantly higher than any he'd made in the past 12 months. I therefore think HSBC ought to have also contacted Mr S, prior to processing the payments, to assure itself that he wasn't at risk of financial harm from fraud.

Therefore I'm not satisfied that HSBC can rely on this exception of the Code as a reason to not reimburse Mr S.

#### *Did Mr S have a reasonable basis for belief?*

I've considered whether Mr S acted reasonably when making these payments, or whether the warning signs ought to have reasonably made him aware that this wasn't a genuine investment. Having considered everything carefully, I don't think Mr S did act unreasonably in the circumstances of this complaint. I've taken into account that Mr S knew of the director of T, even before the investment opportunity was presented to him, and that he had had prior dealings with him. I've also taken into account that Mr S personally visited the director's home and saw his trade setup in play, which I think would've added a significant level of plausibility to this scam. Mr S had also heard from others who had already invested and received returns – so had seen first-hand that the investment appeared to make pay-outs.

Lastly, HSBC has itself suggested that this is a civil dispute between Mr S and T, rather than a scam. While I disagree on this point, as already explained, I think this evidences that it was not entirely clear whether this was in fact a scam or not, even with the benefit of hindsight and so it doesn't appear reasonable to suggest that Mr S should have identified this, prior to many of these warning flags coming to light.

All in all, I think Mr S acted reasonably. I accept that there were other checks Mr S could have conducted, such as reviewing the FCA register, and that this was referenced in HSBC's warning – but by not conducting all potential checks, I don't think this signifies that someone is therefore unreasonable in proceeding. I think there were enough factors at play that Mr S relied on when assuming this investment was genuine and that he's therefore met his liabilities under the Code for reimbursement.

#### *Compensation*

HSBC has awarded Mr S £150 compensation to acknowledge that it provided contradictory information and that there were delays in providing an outcome to him. Having considered this offer, I think it's fair. While I understand Mr S has experienced a great deal of stress and worry during the complaints process, I have to factor in that this will largely be due to the actions of the fraudster and the process of complaining in general, rather than the additional actions of HSBC. I think £150 is a proportionate offer to acknowledge the additional stress HSBC's actions caused.

#### **My final decision**

My final decision is that I uphold Mr S's complaint against HSBC UK Bank Plc and I direct it to:

- Refund Mr S in full the payments he made towards the scam (£60,000)

- Apply 8% simple interest, from the time it declined Mr S's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 December 2024.

Kirsty Upton  
**Ombudsman**