

The complaint

Mr M is unhappy that HSBC UK Bank Plc ("HSBC") hasn't refunded him all of the money he lost after he fell victim to an Authorised Push Payment ("APP") scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

In or around October 2021, a friend of Mr M's recommended an investment opportunity to him which involved the rental of mobile power bank stations. Mr M has said his friend was already investing and he'd been shown them receiving a return on their investments. Mr M has said he researched the company on Companies House and viewed videos about the opportunity. Alongside this, Mr M has said he searched the company thoroughly online and he didn't see anything that concerned him, adding that he knows about these things due to the nature of his job.

Believing everything to be genuine, Mr M decided to invest and between 14 October 2021 and 10 November 2021 Mr M made multiple payments from his HSBC account. These were made up of international card payments and faster payments. Mr M believed the initial payments being made were to purchase products. He's said that, through an account that had been set up for him by the company he was investing with, he could see that he was making profits.

Mr M was also able to make a couple of withdrawals and, impressed with what he saw, he decided to invest more. But when Mr M tried to make a further withdrawal, he found his account had been frozen and he was told that he would need to make a further investment, or he wouldn't be able to withdraw the money he had accumulated. Still believing everything to be genuine, Mr M went ahead and made a payment of £12,000, along with three further payments in the belief that this would 'unlock' his account.

But when Mr M still didn't receive his money back, he arranged to attend the company's offices. But on arriving at the address he found the company wasn't there and then saw the company's website had been taken down. Mr M realised he'd fallen victim to a scam and that he'd been sending payments to accounts the fraudsters controlled.

On realising he'd fallen victim to a scam Mr M raised the matter with HSBC. It looked into his complaint and upheld it in part. In summary it refunded £15,319 to Mr M, this was made up of six of the faster payments he'd made. HSBC didn't think it was liable for the other two faster payments, of £6,000 and £2,000, nor for the payments Mr M had made using his debit card. This was because it said it had spoken to Mr M about these faster payments at the time he'd made them and he'd confirmed they were genuine. It added that Mr M had authorised the card payments.

A breakdown of the relevant transactions is listed below;

Date	Type of transaction	Amount
14/10/21	Faster payment to Nasir Uddin	£20 (refunded by HSBC)
15/10/21	International card payment	£400.41
15/10/21	International card payment	£800.83
15/10/21	International card payment	£800.83
15/10/21	International card payment	£240.25
16/10/21	Faster payment to Nasir Uddin	£2,000 (refunded by HSBC)
16/10/21	International card payment	£230.24
16/10/21	International card payment	£500.52
16/10/21	International card payment	£580.60
16/10/21	International card payment	£600.62
16/10/21	International card payment	£240.25
17/10/21	International card payment	£900.93
17/10/21	International card payment	£700.73
18/10/21	Faster payment to Nasir Uddin	£308 (refunded by HSBC)
20/10/21	International card payment	£4,967.13
21/10/21	International card payment	£159.53
22/10/21	Withdrawal	£29
22/10/21	International card payment	£2,991.12
22/10/21	International card payment	£2,991.12
22/10/21	International card payment	£2,991.12
22/10/21	International card payment	£2,991.12
23/10/21	Faster payment to Nasir Uddin	£6,000
24/10/21	Faster payment to Nasir Uddin	£900 (refunded by HSBC)
25/10/21	Withdrawal	£437
25/10/21	Faster payment to Nasir Uddin	£91 (refunded by HSBC)
27/10/21	Faster payment to Nasir Uddin	£12,000 (refunded by HSBC)
08/11/21	Faster payment to Aktif T.S	£2,000
08/11/21	International card payment	£100.30
10/11/21	International card payment	£20.27

**I understand Mr M also made some additional payments using his credit card, but these are not being considered as part of this complaint.*

Unhappy with HSBC's response, Mr M brought his complaint to this service. One of our Investigator's looked into things and didn't think HSBC needed to do any more. In summary, our Investigator considered the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). HSBC has signed up to the CRM code, which requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

Our Investigator explained that the CRM Code only applied to the faster payments Mr M had made but didn't apply to the card payments. But she went on to think about whether HSBC missed an opportunity to identify that Mr M was falling victim to a scam and for it to have prevented Mr M from making any of these payments.

In respect of the faster payments, our Investigator thought there was enough going on that Mr M ought reasonably to have had some concerns about the payments he was making. She added that even if HSBC had provided Mr M with an effective warning it wouldn't have made a difference, this was because when it had discussed the payments with Mr M he had insisted they were genuine and was adamant that they should be put through.

When thinking about the card payments, our Investigator thought that HSBC ought to have identified the payment Mr M made on 16 October 2021, for £600.62, as unusual. This was because, at this point, Mr M had sent a significant amount of money in a short space of time, and our Investigator felt HSBC ought to have discussed the payment before allowing it to be progressed. But for the same reasons, as explained above, our Investigator didn't think that an intervention would have made a difference and prevented Mr M from making the payments.

Finally, our Investigator said she thought HSBC had done what it could to try and recover the money from the beneficiary bank (the bank to which the payments were made), but unfortunately no funds remained. She also didn't think a chargeback would have succeeded for the card payments, as Mr M had received the service from the payment gateway to which the payments were made.

Mr M didn't agree with our Investigator's view. In summary, he thought HSBC could have done more to identify he was being coerced and it should have known he was being scammed.

As agreement couldn't be reached, the complaint has been passed over 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.

I'm aware in his submissions Mr M has referred to other decisions issued by our service and actions that a different payment provider took when dealing with one of his friends, who had fallen victim to the same scam. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr M's 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.

Having done so, I have reached the same conclusions as those of the Investigator. I'm extremely sorry to hear about what happened to Mr M. I can understand entirely why he feels so strongly that his money should be returned to him. It's important to clearly acknowledge that it is not in dispute here that Mr M has been the victim of a crime here and I can understand how losing this money has impacted him and I'm sorry to hear of the difficult time he's been going through.

But I can only compel HSBC to refund Mr M if it is responsible for the loss incurred. Having carefully considered the circumstances of this complaint, I can see no basis on which I can fairly say that HSBC should be held liable for the remainder of the money Mr M has lost. I will explain why.

Faster Payments

The CRM Code only covers authorised push payments, so for the purposes of Mr M's complaint I am only considering the bank transfer payments, under the scope of the CRM Code. I'll address the card transactions later.

The starting principle of the CRM Code is that a firm should reimburse a customer who is victim of an APP fraud except in a small number of circumstances. The exceptions to reimbursement relevant to this case are:

- The customer made the payment without 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.
- The customer ignored an effective warning in relation to the payment being made.

Unfortunately, I think the evidence suggests Mr M didn't have a reasonable basis for believing he was dealing with a legitimate financial business when he made the transfers. I do recognise Mr M was introduced to the investment by his friend who had already invested and who had told him about their profits. But from an online review of the company Mr M was dealing with I can see poor reviews dating back over two years.

I'm also mindful that the initial offering of making £500-£800 per day, with the fraudsters saying they will personally guarantee losses, seems improbable to the point of being too good to be true. I don't think delivering such a profit is plausible and I'm not persuaded Mr M was provided with a persuasive answer as to how this could be possible.

I also don't think a legitimate company would ask for further investments to be made, in order for funds to be withdrawn. As well as this, the payments being made appear to have been made to individuals, rather than to a business account in the name of the company Mr M believed he was dealing with, which again is not how a legitimate company would typically work.

Alongside this, there's also the channels through which the investment was discussed and the deal was made. The evidence of communication between Mr M and the scammer, that has been submitted to this service, shows it to be through social media and messaging apps and Mr M was told the customer service department couldn't communicate in any other way. That seems an unusual set up for a legitimate investment and the documentation that Mr M was reviewing about the investment appears quite basic.

I appreciate Mr M has told us that he carried out some research on Companies House and he was able to withdraw some money. But, when considering the amount he had paid by the time he was able to make these withdrawals, the withdrawals were for quite modest amounts.

I can understand how in isolation any one of these things may not have prevented Mr M from proceeding. But when taken collectively I think there were sufficient unusual factors here that Mr M ought to have acted far more cautiously than he did.

I'm satisfied, therefore, that Mr M didn't have a reasonable basis for believing he was making a payment for a legitimate investment, so HSBC isn't required to provide him with a full refund under the CRM Code.

I've also considered whether HSBC met its standards under the CRM code in terms of the warnings it provided to Mr M when making the payments. The code also says;

SF The assessment of whether a Firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the APP scam that took place...

In the circumstances of this case I don't think better warnings or intervention by HSBC would have made a difference here and I'm persuaded there is convincing evidence to support this finding.

I don't think any further probing or questioning would have likely led to Mr M undertaking any further research or would have led him to suspect he was being scammed. Where HSBC did intervene and discuss the payments with Mr M, he was confident on the call and assured the HSBC agent that the payments he was making were legitimate and to a trustworthy source. Mr M seemed frustrated with HSBC's intervention, confirming to it that he wanted the payments to go ahead and explaining that he would be making further payments and that he couldn't understand why they kept being stopped, telling it that he knew the person and they were a friend of his.

The evidence from Mr M suggests that he was very confident about the investment he was making, he placed a significant amount of trust in the fraudsters and Mr M seemed determined to make the payments. And I think that's what he would have done irrespective of any further warnings or questioning, so even if HSBC had provided effective warnings, on balance and for the reasons explained, I'm not persuaded it would have had a material effect on preventing the scam.

Overall, when considering the CRM code I think the money HSBC has already refunded is fair and reasonable.

Card payments

I'm mindful Mr M has said HSBC ought to have known this was a scam and done more to protect him. As Mr M authorised these payments, HSBC had an obligation to follow his instructions. But, alongside the provisions of the CRM code, there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the transfer - as a matter of good practice HSBC should've been on the lookout for unusual and out of character transactions.

For the same reasons as our Investigator, I think at the time Mr M made a card payment for £600.62, on 16 October 2021, a pattern was starting to emerge that wasn't typical of how Mr M typically ran his account. As such I think, HSBC ought to have intervened and discussed the payment before allowing it to be progressed. But this in itself wouldn't be enough for me to say that HSBC should refund the money Mr M lost. I would also need to be persuaded that its intervention would have made a difference and prevented the payments from being made. I have to base my findings on the balance of probability – that is, what I think is more likely to have happened, taking into account what I know.

And, for the same reasons that I've mentioned regarding the faster payments, I don't think an intervention would have made a difference. If HSBC had contacted Mr M, before allowing the payments to be progressed, I'd have expected it to ask some proportionate questions about the payments. But I'm persuaded it's more likely than not that, even if HSBC's questioning had gone further than it did, when it discussed some faster payments with him, I think Mr M would have been able to give plausible and persuasive answers to the bank, such was his belief that this was a genuine investment.

I don't think it would have been able to dissuade him from making this payment (or any payment after that) and prevented his loss. Mr M's testimony is clear that he was satisfied with the due diligence he had completed and believed that the investment opportunity was genuine.

Overall, I'm not persuaded that I can fairly or reasonably say HSBC would have been able to have foreseen that Mr M was falling victim to a scam. Therefore, I don't think HSBC's failure to intervene sooner than it did and to adequately question Mr M can reasonably be considered as the proximate cause of his loss in these circumstances.

Recovery

I've also considered whether HSBC could have done more to try to recover the money once it had been told of the scam. We'd expect a business to take reasonable steps to try to recover the money from the bank it was sent to. HSBC did try and recover the funds Mr M had made by faster payment, but unfortunately no funds remained.

In relation to the card payments, there are other methods available to card holders that might be used to try and recover money lost to scams. One such method is for the card issuer to raise a chargeback on behalf of its customer.

In the circumstances of this case, when making the card payments, Mr M has essentially paid the money transfer company for a service: the sending on of funds. That service has been provided. And so, even though the reason for the payments turned out to be a scam, Mr M has no valid chargeback claim against the money transfer service. It's provided the service it was paid for.

I do have a great deal of sympathy for the situation that Mr M finds himself in and it is unfortunate that he has lost money to this cruel scam. But for the reasons I've explained I'm not persuaded it would be fair or reasonable for me to ask HSBC to refund Mr M the remainder of the money he lost.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 February 2024.

Stephen Wise
Ombudsman