

## **The complaint**

Mr K is unhappy that HSBC UK Bank Plc has decided not to refund him after he was the victim of an Authorised Push Payment (APP) scam.

## **What happened**

Mr K says he received a cold call from a company I'll refer to as P, followed by a letter, offering assistance in recovering funds that he'd lost in an investment some years earlier. But this turned out to be a scam.

He was told his initial investment of £25,000 was not lost, as he'd previously thought, and was now worth approximately £90,000. The scammers explained his money was being held in escrow and P could help to recover and return this to Mr K.

Mr K made payments from other accounts and using other sources of funds. This complaint relates to his losses from his HSBC account.

Mr K made several payments across April and May 2022, totalling £21,018.56 of which £10,221.86 was recovered. His remaining losses from his HSBC account total approximately £10,796.70. The payments related to various fees and commissions that the scammers said were needed to release his investment funds.

Mr K said he researched P and found them on Companies House. He said P didn't have a website but there were no other red flags when looking online. He went on to receive various documents from P for the payments, some of which he was told would be refundable when his investment profits were released.

Mr K said, when trying to contact P, after he was told his money would be released to him, he couldn't reach them and so he thought it could be a scam. He says it was at this point he checked the address on the letters and invoices he'd received and realised the address was for a different registered company.

HSBC looked into the matter. It said Mr K made payments on three dates in April and then reported those as scam payments on 1 May 2022. He then made two further payments to the different payees, but part of the same recovery of funds scam involving the company P, on 13 May 2022. He then went on to report those as scam payments on 14 May 2022. HSBC said in its final response that Mr K was given warnings when he made the payments. But Mr K confirmed that when making the payments he chose the incorrect payment reason to avoid the bank's fraud detection system. HSBC said if Mr K had selected the correct reason for the payments he would have been warned about cold calls and the promise of guaranteed returns and to check the company was genuine and authorised by the FCA. It said Mr K acted without making precautionary checks. HSBC offered £100 in compensation for the way in which its decision was communicated with Mr K.

One of our investigators looked into things. She felt Mr K's losses weren't covered by the Contingent Reimbursement Model (CRM) code as Mr K had already received full

reimbursement for his losses relating to the original investment. So, he couldn't have thought there was a genuine claim for the money that P was claiming to return to him.

She also said that even if the bank had intervened, she didn't think it would have made a difference. Mr K reported the first three payments as part of a scam and then continued to make further payments after this date. In between the two sets of payments Mr K made payments from another bank account held elsewhere and he continued to make payments even after he reported P as a scam to both HSBC and his other bank.

She also considered that Mr K was advised the previous year about recovery scams by a different bank, and he said he would change his telephone number and not continue to make payments. She went on to say Mr K didn't select the correct payment reason when carrying out these transactions and came up with a cover story with a different bank when he did the same thing. He came up with a cover story about the payments being for building work. And he moved funds to his HSBC account to avoid the blocks that had been placed on his account, by his other bank account provider.

Mr K was unhappy with this outcome and asked for an ombudsman to review the matter. He said HSBC approved the account names and numbers when he made the payments and he therefore assumed they were safe. Mr K's representatives also added that it thought the payments were covered by the CRM code and Mr K had a reasonable basis of belief because the scammers were convincing and appeared to be a clone of a legitimate firm.

### **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 not recommending that Mr K receive a refund for his losses from HSBC. I'll go on to explain why HSBC doesn't need to refund Mr K in this instance.

I disagree with the investigators initial finding that Mr K's payments are not covered by the CRM code as I believe they are. I think even if Mr K had been refunded his losses from the initial investment from his bank, it's possible he could still seek to recover his initial funds and any returns made on those funds. So, I don't think there is an issue with Mr K believing the payments were for a legitimate purpose but were in fact fraudulent. And the payments are covered by the CRM code.

But I do agree with the investigators finding that HSBC isn't liable to refund Mr K under the CRM code. She said, and I agree, that better intervention by HSBC wouldn't have made a difference. I'll explain why in more detail.

### ***Did Mr K have a reasonable basis of belief when making these payments?***

I've started by considering whether Mr K had a reasonable basis of belief when deciding to make these payments.

Having considered Mr K's actions at the time he made these payments, his previous scam claims, all the correspondence he's provided and the banks notes, I'm satisfied that Mr K was or ought reasonably to have known he wasn't going to recover the funds he originally invested. Each time he appears to have been scammed, he's told his initial investment is a different amount (far larger than his initial investment) and given a range of different reasons why he needed to pay varying amounts, in order to access his funds. And he had been told and seems aware that all the previous "recovery attempts" were in fact scams.

Mr K says he lost an initial £25,000 to an investment in 2018. But Mr K also spent around £106,000 in 2019 and 2020 falling for recovery scams, most of which his banks have refunded. And in this particular scam, Mr K spent approximately a further £58,000 across April and May 2022. Overall, I haven't seen any real difference in the scams that Mr K fell victim to previously and this one where he was contacted by P. Mr K hasn't said or shown any convincing evidence to support why P was genuine given the plethora of warnings and advice, he'd been given, about proceeding with caution with any company claiming to recover his lost investment funds.

It appears that Mr K fell victim to the exact same scam twice before, with payments from a different bank account, in the two years prior to this one. Mr K received partial and, in some instances, full refunds for the payments he made. Mr K also seems to have been aware that he was scammed on those occasions. And was given at least some advice to be on the look-out for these types of scams in the future. But when P contacted him, I can't see that he did anything more than check Companies House to see if it was a registered business. And when he received the paperwork from P, he doesn't appear to have noticed the address is different to that on Companies House, something that he did realise after he thought he'd been scammed.

Given that Mr K had been scammed at least twice before, it would be reasonable for him to have made further checks and enquiries before deciding to part with such large sums of money, based on a cold call and a few invoices. In light of this, I'm not persuaded Mr K had a reasonable basis of belief, that he was dealing with a genuine company, attempting to recover his investment funds.

*Did HSBC meet its standards under the CRM code?*

I can't see that HSBC intervened with any of the payments that Mr K made as part of this scam. There is an argument that it ought to have done given the account activity, particularly after he reports the first set of payments as being part of a scam and then goes on to make payments of £5,000 and over, just a few weeks later. However, I don't think better warnings or intervention by HSBC would have made a difference here and there is extensive and convincing evidence to support this finding.

Mr K has fallen victim to several recovery fund scams across a number of years. At each juncture, he was given warnings about scammers targeting him, with promises of recovery. From the correspondence Mr K has provided, I can see he was advised that companies asking for money upfront in this way, were very likely to be a scam. That he should proceed with extreme caution and that he was likely to be targeted by scammers because of the initial investment money he lost. Mr K doesn't appear to have heeded those warnings from, the Police, FCA, Insolvency service, liquidators or indeed from HSBC and his other bank account providers.

Mr K had a call with his different bank account provider at the time it refunded his losses from a previous scam in 2020. During that call Mr K acknowledges the scam was sophisticated and that he would proceed with caution going forward. The bank agent says if ever he's unsure he can go online and check the FCA website, and he can always call the bank and they can go through it with him. Mr K goes on to say *"If I'm going to make any sort of payment I'll check with you"*. The bank agent also explains that if this sort of scam happens again the bank might not be in a position to refund him, but he should never think twice about calling the bank if he needs help.

I have also listened to the calls where Mr K is attempting a further payment as part of this scam (on the 11<sup>th</sup> May 2022), which is ultimately blocked by his different bank account provider. I can hear Mr K is frustrated that his payment has been blocked and he tells the

bank agent that they should be working in his interests and allow him to make the payment. As the agent wasn't satisfied with Mr K's responses, she explained that he would need to go to a branch to complete some further checks. Mr K was unhappy with this response and said he'd transfer the money to his account held at a different bank. Which he then did by transferring to his HSBC account and on to the scammers from there.

But I am satisfied from both Mr K's explanation of the events, both in handling his complaints and when he reported the scam – that he would have and did proceed with the payments regardless of the actions of HSBC (and his other banks). And so overall I don't think better or different intervention would have made a difference. Mr K was determined to make the payments, he acknowledged there was at least some risk in that decision and decided to go ahead regardless. Because of that I can't say that HSBC needs to refund Mr K.

In his calls with both HSBC and his other banks, when reporting and discussing the scam, Mr K admits it was like "taking a gamble". He said he made some of the payments because P had promised they were refundable, although he had no way of confirming this. And he said he always had the niggling doubt in the back of his mind, but he was looking at the bigger picture and what he was going to gain (the returns he was promised). I have also seen that Mr K reported some payments to P as a scam (to a different bank account provider) and then continued to make payments to P. So, I'd go so far as to say Mr K understood the scam risk and would have (and did) go ahead regardless of what HSBC (and his other banks) did or said.

I've also thought about Mr K's personal circumstances. In conversations with HSBC and his other bank account providers that this has been questioned and carefully considered. And having done so I can't see any other reason why Mr K should receive a refund under the CRM Code.

#### *Recovery of funds*

I can see that HSBC did make attempts to recover Mr K's funds after he reported the scam. Some of those funds were recovered and this have been returned to Mr K.

Once it was made aware of the scam, I'm satisfied that HSBC did what it could to recover Mr K's money. So it wasn't responsible for Mr K's losses at this point.

#### **My final decision**

I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 December 2023.

Sophia Smith  
**Ombudsman**