

## The complaint

Mr J complains that HSBC UK Bank Plc won't reimburse the money he says he lost to a scam.

## What happened

I issued my provisional decision on this complaint on 10 November 2023. The background and circumstances of the case and the reasons why I was minded to not uphold it were set out in that decision. I have reproduced the provisional decision in italics below:

*The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.*

*In or around May 2020 Mr J was approached, by somebody he knew who ran a property development company, who I'll refer to as K, about a property investment opportunity. Mr J has said at the time his own company was incurring considerable losses due to Covid and he was open to other opportunities.*

*Mr J has said he confided in K about the financial government support he was receiving due to Covid. He's added that K asked him if he wanted to invest and that he could offer good returns, he added that K was very persistent and persuasive. Alongside this Mr J has said that K offered him a consultancy position in his company, while the industry Mr J's own company was in, was closed due to Covid.*

*Mr J decided to invest and on 20 May 2020, using funds he'd received from the government to support his own company, sent £50,000 from his HSBC account, to the account details that K provided.*

*Mr J has said that once he'd sent the money, K started to distance himself from him at work. He's said that K went on to say that the proposed sale of the properties, that Mr J had invested in, had fallen through, so the investment couldn't be returned at that time. Mr J says he still hasn't received his money back. He's added that he also sent around 15 invoices to K, for the consultancy work he did, but six of these invoices remain outstanding.*

*Believing he'd been scammed, Mr J raised the matter with HSBC. HSBC looked into things, but didn't uphold Mr J's complaint. In summary, it didn't think Mr J had lost the money as the result of a bank error and it questioned whether Mr J had taken government support against scheme rules.*

*Unhappy with HSBC's response, through his representatives, Mr J then brought his complaint to this service. One of our Investigator's looked into things but didn't think the complaint should be upheld. In summary she thought Mr J should've taken more precautions and done further research before sending the money. It was also our Investigator's view that Mr J hadn't used the government support he'd been provided with as he was supposed to. But our Investigator went on to say that on balance, she considered the matter to be a civil dispute, rather than a scam.*

*Mr J didn't agree with our Investigator's view and so the complaint has been passed over to me for a decision.*

*What I've provisionally 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 have been good industry practice at the time.*

*Having thought very carefully about HSBC's actions, I'm not intending to uphold Mr J's complaint. I do appreciate how disappointing this will be for him, but I don't think I can fairly say HSBC should reimburse him. I'll explain why.*

*It isn't in dispute that Mr J authorised the payment that left his account. But he alleges that he has been the victim of an Authorised Push Payment (APP) scam and that K's intent from the start was to deceive him. I'm sorry to hear of what's happened to Mr J, and I can understand entirely why he feels so strongly that this money should be returned to him. But not all cases where individuals have lost money are in fact fraudulent and/or a scam.*

*The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it excludes private civil disputes.*

*Simply put, in order to find HSBC was somehow liable to Mr J under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr J and K.*

*The question therefore, is whether K was acting fraudulently from the outset - deliberately setting out to deceive Mr J into making the payment he did with no intent of fulfilling the arrangement. Put another way that means deciding whether the available evidence shows it is most likely that K set out to defraud Mr J with criminal intent. That is a high bar to meet.*

*So, to start, I've considered whether K was running a scam. There's a high legal threshold for this. It's clear the agreement Mr J entered into with K didn't go as Mr J thought it would and I can understand entirely why he feels so strongly about what has happened. But having considered everything provided by both Mr J and HSBC, I'm not persuaded, from what I've seen, that there is enough evidence to say that K set out with the intention to defraud. I say this because there appears to be a number of factors that don't carry the typical hallmarks of these particular types of scam or of a fraudster with an intention from the outset to defraud:*

- *Typically, investment scams involve a fake investment and/or a fake company and generally, the victim has no prior relationship with the fraudster other than the relationship built to discuss the investment itself. In this case, Mr J had known K personally.*
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- *I'm not persuaded there is evidence to show that the K's company was anything other than legitimate at the time. I'm not aware of any ongoing investigations against K or his company or that there have been any charges or offences brought. I'm persuaded that the circumstances put forward by Mr J more likely lend themselves to an investment that went wrong with a company that ultimately ceased trading.*

- *Mr J was taken on as a consultant by K and it doesn't seem in dispute that he carried out some work and received settlement for the majority of invoices that he'd submitted. I'm mindful that Mr J has said there are still some outstanding invoices, but it isn't typical for a fraudster to employ and pay somebody who they have targeted as a victim. It is also not usual for a fraudster to stay in close contact with a victim after they are in receipt of their money, nor to make payments to a victim in recompense for work carried out.*
- *I'm not persuaded, from what I've seen, that Mr J was pressured to invest. Rather, Mr J became interested after hearing, over a period of time, the opportunity K had. Indeed Mr J in his submissions has said that his circumstances at the time made him open to investment opportunities. It appears after the payment was made, K continued to communicate with Mr J and Mr J appeared to continue to work for K. I understand Mr J has said K became more distant, but it is not typically the case with fraudsters to stay in any contact with their victims. More often than not, once in receipt of a victim's money, they will no longer be contactable.*
- *It is also not typical for a fraudster to be so easily traceable and for them to ask for funds to be transferred into accounts held in their genuine name or in the name of a company in which they are a director, which I've seen happened in this case.*
- *Whilst I am unable to share details about a third party and the nature of their relationship, I've also considered the beneficiary bank account, where Mr J's money was sent. The evidence I've seen from the beneficiary bank doesn't raise any concerns that the account was being used for anything but legitimate purposes.*

*Overall, based on what I've seen. I'm currently not persuaded that this situation displays the hallmarks most typically associated with a scam. It follows that, I can't safely say that this would likely meet the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Mr J and K. Clearly there is. But on balance, I haven't found the evidence shows this was an APP scam covered by the CRM Code, so I do not find the code applicable to the payment Mr J sent. Neither do I otherwise find HSBC liable to refund Mr J for any other reason. I think it acted reasonably in investigating Mr J's claim – and it did not reach an unreasonable or unfair outcome in deciding not to refund him.*

*I don't say any of this to downplay or diminish what Mr J has been through. He has my sympathy, in that he hasn't received the return on his investment as he thought he would. But overall, I don't think HSBC has treated Mr J unfairly by not refunding him the payment he made.*

*My provisional decision*

*My provisional decision is that I don't uphold this complaint against HSBC UK Bank Plc.*

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 24 November 2023.

HSBC accepted my provisional decision and had nothing further to add. Mr J didn't respond with any further information that he wanted me to consider.

### **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.

As HSBC has agreed with my provisional decisions and as Mr J hasn't provided anything new for me to consider, I see no reason to depart from the conclusions I indicated in my provisional decision. I'm sorry to have to disappoint Mr J, but I remain of the view that this complaint shouldn't be upheld for the reasons set out in my provisional decision.

### **My final decision**

For the reasons given above, and within my provisional decision, my final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 December 2023.

Stephen Wise  
**Ombudsman**