DRN-4745850

The complaint

Ms K complains that HSBC UK Bank Plc won't refund the money she lost when she invested in a property development company.

What happened

Sometime in early 2019, Ms K says a real estate advisor recommended an opportunity to invest in a property development company to her. She understood she would be providing a loan to the company, that her investment would be used to funds the company's projects, and that she would receive an income in return. And, after looking into the company, Ms K decided to invest and made several payments from her HSBC account to the property development company.

I've set out the payments Ms K made from her Nationwide account below:

Date	Amount
30 May 2019	£25,000
5 February 2020	£25,000
6 February 2020	£25,000
7 February 2020	£15,000

Unfortunately, Ms K didn't receive the income from the investment she was told she would, and the property development company has now gone into administration. Ms K then reported the payments she had made to HSBC and asked it to refund the money she had lost.

HSBC investigated but said it felt this didn't meet the criteria to be treated as a scam. It said it felt this was a civil dispute between Ms K and the property development company, so didn't agree to refund the payments she had made. Ms K wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said they didn't think the circumstances here met the definition of a scam, so they didn't think HSBC should have to refund the money Ms K had lost. Ms K disagreed with our investigator, so the complaint has been passed to me.

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.

Does HSBC have to refund Ms K, under the CRM code?

In broad terms, the starting position at 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 Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The relevant definition of a scam from 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 in order to determine whether Ms K has been the victim of a scam as defined in the CRM code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and the property development company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what she's told us, I'm satisfied Ms K made the payment here with the intention of investing with the property development company. I think she thought her funds would be used to fund projects the company was carrying out, and that she would receive returns on her investment. And I haven't seen anything to suggest that Ms K didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the property development company intended a different purpose for the payments, or that Ms K's and the property development company's purposes for the payments weren't broadly aligned.

From what I've seen, the property development company completed three different development projects – in three different cities across the UK. It also worked on a number of other developments, which it sold to developers when it experienced financial difficulties. And I wouldn't expect a company that intended to scam investors, to complete these projects that would have involved a large amount of investment and management. So I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

I understand the property development company was offering high rates of return and paying very high commission to introducers, which made the rate of return offered on the investment very unlikely. But while this, and other irregularities or poor business practice some investors have highlighted may suggest the property development company wasn't acting as I would expect a professional business to do, I don't think it goes far enough to show that it intended to operate a scam.

I'm also aware some investors have highlighted a number of inaccuracies or irregularities with the accounts the company has filed. But while this may suggest financial mismanagement on the part of the company, this is not the same as the intention to operate a scam and I don't think it shows that the company never intended to use investor's funds for development projects.

I've also not seen anything from the administrators of the company which suggests the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for these payments was different than the purpose Ms K intended. And so I don't think the circumstances here meet the definition of a scam, or that HSBC has acted unreasonably in not agreeing to refund the money Ms K lost from these payments under the CRM code.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take the payments using dishonest deception. If that happens, Ms K can ask HSBC to reconsider her claim for these payments under the CRM code and, if not satisfied with its response, bring a new complaint to our service.

Should HSBC have done more to protect Ms K when the payments were made?

Ms K has also argued HSBC should have identified that the payments she was making were unusual in comparison to the previous spending on her account, and so intervened to ask her questions about the payments and warn her about the risks involved.

And, in addition to the requirements of the CRM code, the regulatory landscape, along with good industry practice, sets out other requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

But, even if HSBC had carried out the checks I would've expected it to have done, I don't think it would have uncovered significant concerns and I don't think the payments Ms K was trying to make to the property development company would have been stopped.

In these circumstances and given the size of the payments Ms K was making, I think it would be reasonable to expect HSBC's checks to include questions about the purpose of the payments and then relevant follow-up questions about the investment Ms K thought she was making and what checks she had done to satisfy herself it was genuine.

But Ms K thought she was investing in a loan offered by the property development company where she would provide capital and the company would pay her interest each year. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to HSBC or that the returns Ms K were told she would be paid would have seemed too good to be true.

At the time, the property development company – or the connected group of companies – had been listed on the governments register of limited companies and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Ms K and NatWest that the company was genuine. Ms K has also said she had carried out a significant amount of due diligence into the company and so, if HSBC had asked about the checks she had done, I think this would also have reassured it.

I've also seen copies of promotional literature the property development company issued in relation to the loans, and I think this looked relatively professional and legitimate. So, if HSBC had asked to see any of this paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if HSBC had carried out the checks I would've expected when Ms K tried to make these payments, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to HSBC. And so I wouldn't have expected it to stop Ms K making the payments.

Ms K has said HSBC should have pointed out to her that the property development company wasn't regulated by the FCA and the higher level of risk this involved. But while HSBC could have mentioned this, I don't think it was necessarily unreasonable for it not to given the other information it would likely have been given suggesting the company was legitimate. And I wouldn't expect HSBC to have offered Ms K financial advice on what level of risk she was comfortable taking on.

Ms K has also said her HSBC account was advertised as benefiting from fraud prevention measures, and that HSBC's procedures for preventing fraud have changed since she made the payments. But I don't think the advertised benefits of her account mean I would've expected HSBC to take action beyond the requirements I've mentioned above. And, in any event, for the same reasons I don't think the checks I would've expected it to carry out would've uncovered any concerns, I don't think any checks related to the account benefits she's mentioned would've uncovered any concerns either. I can also only hold HSBC responsible for meeting the obligations and expectations that were in place at the time, regardless of whether HSBC has implemented different procedures since.

Summary

I'm sorry to disappoint Ms K, as I appreciate she has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund the money she lost here based on the evidence that is currently available.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 17 April 2025.

Alan Millward
Ombudsman