

The complaint

Mr C complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In 2019, Mr C was told about an opportunity to invest in a property development company by an investment broker. He was told he would be providing a loan to the company, and that his investment would be used to fund the company's projects and he would receive regular interest payments in return. And after seeing brochures for the investment, Mr C decided to invest and made a number of payments from his HSBC account to the property development company.

I've set out the payments Mr C made from his HSBC account below:

Date	Amount
6 December 2019	£20,000
17 December 2019	£3,067.68

Unfortunately, Mr C didn't receive all the interest payments he was told he would, and the property development company has now gone into administration. Mr C then reported the payments he had made to HSBC as a scam and asked it to refund the money he had lost.

HSBC investigated but said it felt the property development company was a genuine company. So it didn't consider this was a scam and didn't agree to refund the payments Mr C had made. Mr C 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 Mr C had lost. Mr C 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.

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 Mr C 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 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 he's told us, I'm satisfied Mr C made the payments here with the intention of investing with the property development company. He thought his funds would be used to fund projects the company was carrying out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr C 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 Mr C'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 appreciate Mr C has argued that the company only completed these projects in order to provide the investment with an appearance of credibility. But, while this is possible, such an argument could be made about any work done by any company and doesn't, in of itself, provide any evidence of a scam. And, in any event, I still think more work appears to have been put into these projects than I would expect from a company that only wanted to use them as a front for a scam.

Mr C has also argued that the property development company was offering very 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 Mr C has 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.

Mr C has also highlighted a number of inaccuracies or irregularities with the accounts the company has filed, and that it has only filed accounts made up to 2018. 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 Mr C intended. And so I think HSBC has acted reasonably in saying the circumstances here don't meet the definition of a scam from the CRM code, and in not agreeing to refund the money Mr C lost from these payments as a result.

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, Mr C can ask HSBC to reconsider his claim for this payment and, if not satisfied with its response, bring a new complaint to our service.

I'm sorry to disappoint Mr C, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund him 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 Mr C to accept or reject my decision before 26 November 2024.

Alan Millward
Ombudsman