

## The complaint

Mrs H complains that HSBC UK Bank Plc ('HSBC') won't reimburse the money she lost when she says she fell victim to a scam.

## What happened

Mrs H says she was introduced to an investment opportunity with a company I'll call G in this decision by an unregulated broker. A friend also recommended G. G was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. On 22 October 2019 Mrs H invested £10,000 in G.

Mrs H didn't receive the returns she expected, and G has gone into administration. Mrs H believes the investment wasn't genuine and that she is the victim of a sophisticated scam. She complained to HSBC in September 2023 and said it failed in its duty of care to protect her and should reimburse her under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). In support of her belief that she is the victim of a scam, Mrs H referred to the high rate of commission paid to unregulated introducers, which – when taking into account the high rates of return offered to investors – meant G needed to double its capital just to return the principal. Mrs H said HSBC should have asked to see her correspondence with G and considered the three charges G registered shortly before her investment and a director's history of bankruptcy.

HSBC didn't agree to reimburse Mrs H. It said G was a genuine company that had gone into administration and that Mrs H had a civil dispute which it couldn't consider under the CRM Code.

Mrs H was unhappy with HSBC's response. Through her professional representative, she brought a complaint to our service in September 2023.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that G didn't intend to provide the agreed investment or make the returns it set out. This meant that she couldn't ask HSBC to consider Mrs H's complaint under the CRM Code.

Mrs H didn't agree with the investigator's findings. In summary, she said:

- Investment literature claimed that the G group made £26 million profit in 2016 and had 100 employees (as did information on G's website), but for the period ending 30 December 2016 it filed small company accounts.
- G established and operated a Collective Investment Scheme without being authorised or exempt, and in recommending them brokers were in breach of S19 of the Financial Services and Markets Act.
- The liquidator's report for a subsidiary of G referred to in excess of £230 million passing through a bank account and to the absence of bookkeeping records.
- Joint administrators have revealed that a third party company has conducted a targeted review of around 12,000 of G's banking transactions looking at the

movement of assets and intercompany funds.

- Over 1,600 people have lodged claims against G totalling over £120 million. It is difficult to justify a failure to return capital invested on financial difficulty when G was in receipt of over £120 million and completed three projects.

### **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 deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mrs H's claim falls within the scope of the CRM Code, which defines an APP scam as:

*...a transfer of funds executed across Faster Payments...where:*

- (i) *The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) *(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mrs H to demonstrate she is the victim of an APP scam.

To decide whether Mrs H is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mrs H thought this purpose was legitimate.
- The purpose the recipient (G) had in mind at the time of the payments, and whether this broadly aligned with what Mrs H understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mrs H thought she was investing in a property development company. I haven't seen anything to suggest that she didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose G had in mind, I've considered the wider circumstances surrounding G and any linked businesses. The key information to this case is:

- G completed three different development projects. G also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I appreciate that Mrs H believes G completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mrs H are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring her claim within the scope of the CRM Code. Whilst G may have, for example, misrepresented certain information, filed incorrect accounts, and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that G intended to use Mrs H's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose G had in mind when it took the payment from Mrs H was different to hers. So, I consider HSBC acted fairly in not considering Mrs H's complaint under the CRM Code.

If material new evidence comes to light at a later date Mrs H can ask HSBC to reconsider her fraud claim.

I'm very sorry to disappoint Mrs H, as I know she has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund her based on the evidence that is currently available.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 December 2024.

Jay Hadfield  
**Ombudsman**