

The complaint

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

What happened

What Mrs L says

Mrs L says that she was persuaded to invest with a company I'll refer to as H in my decision. H 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. Mrs L says that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In June 2019 Mrs L decided to invest and paid H £10,000.

H has gone into administration. Mrs L believes the investment wasn't genuine and that she is the victim of a scam. She complained to HSBC in January 2024 and said it failed to appropriately intervene when the payment was made and should reimburse her under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Mrs L provided a large amount of publicly available information in relation to H and its subsidiaries and explained why she believed she was the victim of a scam. Her main reasons were:

- The Investment Memorandum provided by H included incorrect, misleading and vague information to induce people to invest.
- H has used a number of techniques to conceal what was really happening to investor funds. For example, the accounting period was changed four times in the ten years H was active. And, in this period, only seven sets of accounts were filed, and small company accounts were filed which contradicts information provided in the Investment Memorandum.
- High commissions of up to 35% were paid to introducers which is indicative of misappropriation of investor funds and is a hallmark of a Ponzi scheme. The payment of such commissions also makes the promised rate of return near impossible to meet.
- Two separate firms of independent auditors resigned. One resigned prior to accounts being filed as they were not provided with sufficient information to complete their audit, and the other after issuing an adverse opinion and stating fees hadn't been paid.
- There was a deliberate movement of assets to ensure debts weren't paid.

What HSBC says

HSBC didn't agree to reimburse Mrs L. It noted that H went into administration and liquidators had been appointed, and there was no formal communication from the FCA or FSCS to say H operated a scam. Overall, HSBC said Mrs L had a civil dispute with H.

Mrs L was unhappy with HSBC's response and brought a complaint to this service.

Our investigation so far

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

Mrs L didn't agree with the investigator's findings, so her complaint has been passed to me to decide. The main point made was that H and its subsidiaries were operating a very sophisticated scam leaving around £90 million of investors' funds unaccounted for. Mrs L's response was lengthy, so I have summarised what I consider to be her main points below:

- By August 2009 the director who was the face of H was declared bankrupt following a petition for bankruptcy filed against him. His new venture in H followed the demise of other companies he was a director of leaving money owed to creditors. This director was declared bankrupt for the second time in 2023. Information was also provided in relation to other directors of subsidiaries of H.
- High commissions paid to introducers weren't disclosed to investors.
- H raised £123 million from investors but only spent £38 million on property acquisitions. Mrs L says the remaining funds weren't used for their intended purpose.
- H engaged in fraudulent financial activities, such as registering illegitimate charges against properties. In doing so, H has breached a duty under the Land Registration Act 2002 and committed a criminal offence.
- Company accounts were inflated.
- At least six companies relating to H took out bounce back loans. One such loan was deposited into the personal account of a director of H.
- Numerous companies connected to H failed to file accounts for many years with the aim of obscuring their true financial position. And accounts that were filed showed fanciful figures.
- Projects which were said to be profitable in fact incurred losses.
- H said it failed because of the pandemic but evidence shows H had defaulted on loan payments before it, and the collapse was more likely related to regulatory changes including the FCA's mini bond ban.
- At least 48 companies were transferred out of the H group prior to liquidation in a deliberate attempt to shelter assets from creditors.
- Directors of H haven't cooperated with insolvency practitioners of H and subsidiary companies because they are hiding information which would show they were operating a Ponzi scheme.
- The structure and methods used by H closely mirrored other known scams and directors of H have links with others who have operated such schemes.
- Ponzi schemes often engage in genuine activity early on to build credibility.

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 am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Whilst I have considered all points raised by Mrs L, I will not comment specifically on each one. I also cannot comment on other decisions issued by the Financial Ombudsman Service.

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.

HSBC is a signatory to the CRM Code. Under this 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 an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mrs L'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 L to demonstrate that she is victim of an APP scam.

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

- The purpose of the payment and whether Mrs L thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mrs L 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 L 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 H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers. 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 L believes H completed these developments to give the appearance of legitimacy and to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

It's clear from Mrs L's own submissions that a substantial amount of money was spent on the acquisition of property. Whilst the assumption has been made that the remaining funds provided by investors have been used inappropriately, there is currently no reliable evidence to show that this was the case. In the absence of evidence to show how the remaining funds were used, I consider it just as likely that funds were used for intended purposes.

- Points raised by Mr L 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 H may have misrepresented certain information, failed to cooperate with administrators, not filed 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.
- Links directors might have to others who have been involved in Ponzi schemes don't demonstrate that H was a Ponzi scheme.
- 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. Administrators are looking into transactions made by H, but haven't said anything more.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mrs L'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 H had in mind when it took Mrs L's payment was different to hers. So, I consider HSBC acted fairly in not considering Mrs L's complaint under the CRM Code.

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

I'm really sorry to disappoint Mrs L, 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 L to accept or reject my decision before 3 December 2024.

Jay Hadfield
Ombudsman