

The complaint

Mr M 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 mid-2017, Mr M was looking for an investment online and came across an investment company offering investments in renewable energy. He spoke with the company about the investment available and then made a number of payments from accounts he held with several banks to invest with it.

I've set out the payments Mr M made to the investment company from his HSBC account below:

Date	Amount
1 July 2019	£20,000
7 September 2020	£17,000

Unfortunately, Mr M didn't receive the returns he was told he would from his investments and the investment company went into administration in December 2022. Mr M 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 this was a civil dispute between Mr M and the investment company, rather than a scam. So it didn't agree to refund the payments Mr M had made. Mr M wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence demonstrated that the company had set out to deliberately scam investors. So they didn't think HSBC should have to refund the money Mr M had lost. Mr M 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 M 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 investment 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 M made the payments here with the intention of investing with the investment company. He thought his funds would be used to fund a renewable energy scheme the company was carrying out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr M didn't think this was legitimate.

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

From what I've seen, it appears the investment company did intend to put investors' money towards a renewable energy scheme. A report from the administrators of the company said that the company's research into more environmental ways of dealing with household waste had developed as intended, and that plant and machinery had been installed at the company's trading premises.

The report also said the company had assets valued at around £250,000 and that the director of the company had agreed to purchase these assets and aimed to refund investors via their new company.

I wouldn't expect a company that always intended to scam investors to have carried out this research, installed this machinery, or had this amount of assets. So I think this strongly suggests the investment company was attempting to operate as a legitimate business.

The investment company was registered on the government's register of limited companies, and had filed accounts for a number of years before it entered administration – which I wouldn't necessarily expect of a company operating a scam.

I've also not seen anything from the administrators of the investment company which suggests it was operating a scam. In fact, the administrator's report suggests the failure of the company followed trading restrictions imposed by the Covid pandemic and the unexpected resignation of a director. 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 investment company intended for these payments was different than the purpose Mr M 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 Mr M 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 investment company did take the payments using dishonest deception. If that happens, Mr M can ask HSBC to reconsider his claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

I'm sorry to disappoint Mr M, as I appreciate 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 M to accept or reject my decision before 11 April 2025.

Alan Millward
Ombudsman