

## **The complaint**

Mr and Mrs H complain that HSBC UK Bank Plc won't refund the money they lost by paying what they believe was a scam.

## **What happened**

In August 2019, having found out about an opportunity to invest in a property development company, Mr and Mrs H made a payment of £10,000. The opportunity was presented via a broker but the payment appears to have gone directly to the property development company. They were expecting to receive returns on these funds. But they didn't receive the interest payments expected, nor did they receive their original investment amount back. They tried, unsuccessfully, to contact the property development company and the broker. So, having lost their funds, they believe they've been the victim of a scam.

Mr and Mrs H think HSBC should have done more to protect them from losing their funds. But HSBC didn't consider the investment to have been a scam. So, it didn't agree to refund the payment under the Contingent Reimbursement Model (CRM) Code. It said the payment was made to a legitimate company.

Our investigator considered the complaint. But he didn't think the evidence provided demonstrated that the investment company had set out to deliberately defraud investors and so didn't think the payment should be refunded under CRM.

As Mr and Mrs H disagreed, the complaint has been passed to me to decide.

## **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 in 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 or reasonable for the bank to reimburse the customer even though they authorised the payment.

HSBC is a signatory of 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 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, to determine whether Mr and Mrs H have been the victims of a scam as defined in the CRM code, I need to consider whether the purpose they intended for the payment was legitimate, whether the purposes they and the property development company intended were broadly aligned and, if they weren't, whether this was the result of dishonest deception on the part of the company.

I'm satisfied that Mr and Mrs H made the payment with the intention of investing with the property development company, for which they'd receive returns on their investment. But I'm not persuaded that the property development company intended a different purpose for the payment, or that it wasn't broadly aligned with Mr and Mrs H's intended purpose.

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. I wouldn't expect a company that intended to scam investors to complete these projects as these 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.

There have been suggestions of poor business or financial management around the property development company. But while this, and other irregularities or poor business practice, may suggest the property development company wasn't acting as I'd expect a professional business to do, this isn't the same as intending to operate a scam. And I don't think they show that the company never intended to use investor's funds for development projects.

I've 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 the company was operating a scam.

So, I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose of the property development company intended for this payment was different than the purpose Mr and Mrs H intended. And so, I don't think HSBC has acted unreasonably 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 and Mrs H lost from this payment as a result.

I've thought about what would have happened had HSBC intervened with the payment at the time of it being made. But, based on the above, I don't think HSBC could have uncovered information, especially through proportionate enquiry in relation to the payment, that would have led to significant doubts about the legitimacy of the property development company. And, with that in mind, nor do I think Mr and Mrs H could have uncovered such information at the time either. So, I don't see how any reasonable intervention from HSBC would have made a difference to Mr and Mrs H's decisions to invest.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take Mr and Mrs H's payment using dishonest deception. If that happens, Mr and Mrs H can ask HSBC to reconsider their claim and, if not satisfied with its response, bring a new complaint to our Service.

I'm sorry to disappoint Mr and Mrs H, as I know they've lost a significant amount of money. But I'm not satisfied I can fairly ask HSBC to refund them based on the evidence currently available.

**My final decision**

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 6 January 2025.

Melanie Roberts  
**Ombudsman**