

## **The complaint**

Mr S complains that HSBC UK Bank Plc didn't do enough to protect him when he made payments to a property investment opportunity that he now considers was a scam.

## **What happened**

Mr S made five payments from his HSBC account towards a property development investment with 'H'. Mr S didn't receive the returns he expected, and H went into administration in January 2022. He now says the investment wasn't genuine and that he is the victim of a sophisticated scam.

Mr S complained to HSBC in late 2023, but it didn't uphold his complaint. It didn't consider he was the victim of a scam and instead said this was a failed investment. And because of this, it said he wasn't covered by the reimbursement model he'd raised.

Mr S was unhappy with HSBC's response and brought a complaint to this service. Our Investigator didn't uphold his complaint as they said they hadn't seen sufficient evidence this was a scam.

Mr S maintains that his complaint should be upheld and says that HSBC failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principle 6. He's said HSBC should've asked to see correspondence with H and considered the delay in H filing accounts. Mr S has explained why he thinks H was operating a scam and a Ponzi scheme. In particular, Mr S has referred to high commissions of as much as 35% paid to introducers and to high interest rates of up to 18%. And he says Administrators for H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on.

Our Investigator set out how they'd already addressed these concerns and that these didn't change their view. So Mr S confirmed he wanted an Ombudsman to reconsider his case.

## **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.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), HSBC should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Mr S made five payments toward his investment with H. He sent three payments in June 2019 totalling £25,000 and a further two payments in December 2019 totalling £15,000 – so in total he invested £40,000. We know these payments were made both in branch and online.

Given their values and what it knew of Mr S's personal situation, including his previous account usage, I accept HSBC ought to have asked some questions about the purposes of the payments to understand better what Mr S was doing, alongside providing a scam warning to him. As we don't hold detailed notes from the time, I don't know if the branch staff did cover everything I'd have expected. And I haven't seen this was done for the online payments. However, I don't consider that proportionate conversations would've changed Mr S's decision to invest.

I'm not persuaded the kind of information I'd expect HSBC to have shared/discussed with Mr S would've prevented the payments from being made. H was a legitimately registered company at the time Mr S paid into it and there wasn't anything in the public domain at the time to suggest HSBC should've been concerned that Mr S might be falling victim to a scam. Many of the points Mr S has now raised didn't come to light until later and HSBC wouldn't have been aware what would happen with regards to his losses.

Mr S has provided us with some of the promotional literature for the investment with H. It's persuasive and comprehensive information for investors which sets out how it operates, and the returns expected. It seems highly unlikely that a conversation with HSBC would've prevented Mr S going ahead with the investment when he held this information. And there also wasn't anything obviously concerning about H available at the time of the payment.

I haven't seen information that indicates HSBC ought to have stopped the payments to H at the time Mr S was making them, or that anything it shared would've prevented him from going ahead. And HSBC wasn't required to provide Mr S with investment advice as part of processing this payment, for example, to go through H's finances in the way it's now been suggested by Mr S's representative.

I've then considered whether Mr S is due a refund under the Contingent Reimbursement Model (CRM) code for his payments as they were made after this code was in force. As his representatives argue he was scammed by H, this could apply.

The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mr S transferred funds to another person for what he believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mr S's been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to his payment and so HSBC isn't required to reimburse him under it.

Our Investigator covered in detail why they considered the payment purpose Mr S had in mind, and the purpose in which the recipient had matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mr S's purpose for making the payment was to invest in H and for the funds to be used towards property development. And that he was persuaded at the time, through the paperwork, this was a legitimate venture. I accept that H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mr S's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Mr S when it took his funds.

Mr S's representative has provided additional paperwork from several sources that it says evidence H was operating a scam. But as our Service has explained to it on a number of cases already, while the information provided does indicate there may have been some poor

business practices and/or financial management in some areas of H, this isn't enough to say H was operating a scam. We haven't seen evidence that Mr S's funds weren't used for the intended purpose or that H took them with fraudulent intent.

Ultimately, the information we currently hold suggests that H was a failed investment venture, not a scam. The information provided doesn't evidence H had fraudulent intent when it took Mr S's funds, as required under the definitions within the CRM code. So I can't agree HSBC was wrong to consider Mr S's situation a civil matter, or is wrong not to have reimbursed him under the CRM code at this time.

This also means I'm unable to ask HSBC to reimburse Mr S on the basis that he was vulnerable at the time the payment was made. When the CRM Code applies a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM code doesn't apply, I won't be asking HSBC to reimburse Mr S.

I appreciate Mr S is now in a position where he's lost out financially due to this investment. But I don't consider his loss is the result of any failings by HSBC.

### **My final decision**

For the reasons set out above, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 May 2025.

Amy Osborne  
**Ombudsman**