

The complaint

Mr H complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost after falling victim to a scam.

What happened

In 2020, Mr H was recommended an investment through a company I'll refer to as B. Mr H says he had sold his house and was looking to invest the funds to supplement his income.

Mr H was referred to B by a friend who had invested with them for over a year, had been to presentations and seminars, and received regular returns.

The money Mr H invested with B would be used to purchase specific vehicles that would then be leased out to customers. Mr H would receive a monthly return and at the end of 37 months receive full investment returns. The documentation said that the vehicle/s purchased would be secured in Mr H's favour, with the security registered at Companies House.

Mr H signed an agreement to fund the purchase of three vehicles, with a unit price of £14,000 per vehicle. This required a total investment of £42,000.

Mr H made two payments from his HSBC account of £21,000, on 19 February 2020 and 20 February 2020.

Mr H received returns for 11 months at £802.08 (which totals £8,822.88), in line with the investment agreement. Then in February 2021, Mr H was told B's accounts had been frozen. Mr H didn't receive any further monthly returns.

In March 2021, B went into administration and Mr H realised he'd been the victim of a scam. Through a professional representation, Mr H raised a fraud claim with HSBC in June 2023. HSBC investigated Mr H's fraud claim but declined to refund. HSBC said B was active at the time Mr H made his payments and he'd received returns, so it deemed the matter a civil dispute between Mr H and B.

Mr H wasn't happy with HSBC's response, so he brought a complaint to our service.

An investigator looked into Mr H's complaint and recommended that HSBC refund Mr H's outstanding loss. The investigator explained that the evidence showed that Mr H's funds weren't used for their intended purpose and were obtained by dishonest deception, so his claim was covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Mr H was entitled a full refund as he had a reasonable basis for believing the investment was legitimate when he made the payments.

HSBC disagreed with the investigator's opinion, providing a substantive response. I've summarised their concerns:

- It's incorrect to say that all investors would receive security for their payment, as there were different investors and different investment models.

- We've overly relied on the SFO charges being brought, which conflates with the CRM Code test for what constitutes an APP scam.
- There is insufficient evidence to reach a conclusion at this stage.

HSBC asked for an ombudsman to review the 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.

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Is Mr H entitled to a refund under the CRM Code?

HSBC are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr H made his payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr H thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mr H understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr H was making the payments to B as part of an investment. Based on the evidence that Mr H had available at the time, there isn't anything to suggest Mr H didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mr H thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality back up by the cars they had been promised".

- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr H's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr H's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr H's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr H is entitled to a full refund unless HSBC can establish that an exception to reimbursement applies.

HSBC haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

HSBC haven't provided any evidence that suggests an effective warning was shown to Mr H at the time he made the payments, so they can't rely on that exception to reimbursement.

I'm also satisfied that Mr H had a reasonable basis for believing the investment was legitimate. I say this because it was recommended by a friend who had invested for 12 months and had been receiving the promised returns, which would've been persuasive. Also, B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mr H made the payments. So, HSBC couldn't rely on basis for belief as an exception to reimbursement either.

As, I'm not satisfied that HSBC can rely on an exception to reimbursement, Mr H is entitled to a full refund of £42,000. HSBC can deduct from that refund the returns that Mr H received (which total £8,822.88), meaning the net refund should be £33,177.12.

The points HSBC have raised

HSBC have raised a number of points in response to the view, and I'm aware that our service has previously responded to the points they've raised in detail.

I'd like to reassure HSBC that I have considered all the points they've raised. But I've focused my decision on what I consider to be the crux of the complaint and how I've reached my decision.

In this case, Mr H's welcome letter from B says: "*with our asset backed investment opportunity, your capital is used to fund a specific vehicle, or vehicles...The vehicle you fund is secured in your favour until the loan is repaid by way of a fixed charge, which will be registered at Companies House*". And, as set out above, there is no evidence that a car was purchased with Mr H's funds or that a charge was registered.

Based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mr H's payment is covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations to reach my decision.

The interest award

Prior to the SFO completing their investigation, Mr H's payments wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, HSBC should've considered the available evidence and given Mr H an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and HSBC are entitled to ask Mr H to sign an indemnity to cover this eventuality.

Claims made to the FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here:

<https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr H is now complaining to us about in connection with the activities of HSBC.

As I have determined that this complaint should be upheld Mr H should know that as they will be recovering compensation from HSBC, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from HSBC they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr H has already made a claim at FSCS in connection with B, and in the event the FSCS

pays compensation, Mr H is required to repay any further compensation they receive from their complaint against HSBC, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: <https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>"

Putting things right

To put things right I require HSBC UK Bank Plc to:

- Refund Mr H £33,177.12, being his outstanding loss; and
- Pay interest on that refund at 8% simple per year, calculated from 15 business days after 19 January 2024 until the date of settlement*
- In order to avoid the risk of double recovery the [bank] is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

* If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Mr H, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman