

The complaint

Mr and Mrs R complain that HSBC UK Bank Plc did not refund transactions they lost to a scam.

What happened

Mr and Mrs R found an investment opportunity for a company I'll call 'X'. The business model centred around car leasing; investors like Mr and Mrs R would make an investment in X, which would be used to purchase vehicles that could be rented out to individuals. Investors would get security over a vehicle and would receive a monthly return on its leasing for a set amount of time before receiving an exit fee consisting of the remainder of the capital and the interest detailed in their agreement. Mr and Mrs R deposited a total of £56,000 between 14 and 15 February 2020. They also received returns totalling £11,763.84 making a total loss of £44,236.16.

Eventually, the returns stopped, and Mr and Mrs R felt they had been the victims of a scam. They raised a scam claim with HSBC in June 2023. HSBC issued a final response letter in July 2023 in which they explained X was an active company and that Mr and Mrs R had received returns on their investment, so they felt this was a civil dispute and did not meet the definition of a scam.

Mr and Mrs R referred the complaint to our service and our Investigator looked into it. They felt that, on balance, it was more likely this was a scam and not a civil dispute as HSBC had said. In summary, they explained that the Serious Fraud Office ("SFO") had charged the directors of X, so they saw no reason why a review of the transactions under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code should be delayed. And as the report issued by the FCA found X's actual assets differed significantly to what investors had been told, they felt Mr and Mrs R's transactions met the CRM code's definition of a scam.

Having reviewed the transactions under the code, the Investigator felt Mr and Mrs R had a reasonable basis to believe they were involved in a genuine investment as the paperwork they received appeared to be professional. So, they recommended a full refund of Mr and Mrs R's losses, less any returns they received. As well as 8% simple interest on the transactions from 15 days after the date the directors of X were charged by the SFO to the date of settlement.

Mr and Mrs R accepted the findings set out in the view, however HSBC did not. As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

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.

It isn't in dispute that Mr and Mrs R authorised the payments in question. Because of this the

starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victims of an authorised push payment (APP) scam.

HSBC has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

Can HSBC delay making a decision under the CRM code?

In HSBC's final response letter to Mr and Mrs R's complaint, they said the payments were a failed investment and not a scam, so they did not review the complaint under the CRM Code. Following our initial findings, HSBC said that while the SFO's investigation led to charges it was the outcome of criminal proceedings that they considered relevant to the outcome. And as a result, they asked for a delay to be applied.

The CRM Code states:

R3(1) Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam.

(a) In exceptional cases, that period can be extended provided the Firm informs the Customer of the delay and the reasons for it, and the date by which the decision will be made.

(b) The date in (a) should not be more than 35 Business days after the day on which the Customer reported becoming the victim of an APP scam.

(c) If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

(d) If the Firm relies on (c), it should make a decision no later than 15 business days after the outcome of an investigation is known. After invoking (c), the Firm should not further invoke (a).

As the SFO has confirmed in January 2024 that their investigation is complete and charges have been filed, HSBC should reasonably have given an answer based on the evidence available as per the section of the code set out above.

I also note that the Lending Standards Board has confirmed the code does not require a criminal test to be met in order for a reimbursement decision to be reached. With this in mind, as the directors of X have been charged by the SFO, I am not persuaded that HSBC can fairly delay giving an outcome under the CRM Code.

Have Mr and Mrs R been the victims of a scam, as per the CRM Code?

I have set out the definition of an APP scam as set out in the CRM Code below:

...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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

I've therefore considered whether the payments Mr and Mrs R made to X fall under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

In order to determine if Mr and Mrs R have been the victims of a scam, I have to consider if their intended purpose for the payments were legitimate, whether the intended purposes they and the company they paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Mr and Mrs R expected the funds to be used to purchase vehicles which would then be leased by a subsidiary of X. They would then receive regular returns on this investment. As X's subsidiary was an FCA regulated company, and the documents Mr and Mrs R received appeared to be professional, I see no reason why they would not have thought it was a legitimate investment.

I've gone on to consider whether X's intended purpose for the payments aligned with what Mr and Mrs R intended as set out above. There are two reports that have helped to form my understanding of X's intended purpose for the payments, one by the FCA and another by the administrators of X and their subsidiaries.

The FCA's report states that the number of customers X claimed had entered into leases was 1,200, however they only had 69 registered vehicles on Companies House across its three subsidiaries. When the FCA did a deep dive into the registered vehicles, they found significant discrepancies between the X's business model and the vehicle inventory. These included a high number of what appeared to be second-hand vehicles. While X's business model did allow for some used cars to be leased, it relied on a large extent to securing deep discounts on new vehicles which would not be available on second hand cars. A number of leases were also said to have been entered into at a date which was significantly before the vehicle was put onto the road.

The FCA also found X's valuation of its motor vehicles as unrealistic, and felt the discrepancy was around £18 million. The report from the administrators of the subsidiaries also stated that there was less than one car for every six loan agreements that were known about at the time of liquidation. With the above in mind, I am satisfied that X was not carrying out investments as per the agreements with investors such as Mr and Mrs R. I've seen no evidence to suggest Mr and Mrs R had security over a specific vehicle. And I note the section of the agreement they signed with X that set out the details of the car were left blank.

The SFO has confirmed that the directors of X were accused of falsifying information to encourage people to pay in whilst knowing that the investments were not actually backed up by the cars they had promised. Having considered all of the information available from the FCA, the SFO and the administrators, I am satisfied that investors were dishonestly deceived into making their payments. And it follows that Mr and Mrs R's payments meet the CRM Code's definition of an APP scam as set out above.

Do exceptions to reimbursement under the code apply in this case?

As explained previously, the starting point in law is that Mr and Mrs R are responsible for any payments they have authorised themselves. But the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. One such exception is if they made the payments without a reasonable basis to believe they were for a genuine investment or that X was not

legitimate.

HSBC have said that they think Mr R was a sophisticated and experienced investor, as he held various investment products with HSBC. But on balance I don't think this means he did not have a reasonable basis to believe this investment was genuine.

From what I've seen, the documents Mr and Mrs R received from X prior to investing all appeared reasonably professional and looked to be legitimate. Their understanding of the investment itself and how it would work did not sound unreasonable and there was nothing to suggest at the time that X itself was not legitimate and I note one of its connected companies was authorised and regulated by the FCA.

I don't think there was anything about the investment at that time that should have given Mr and Mrs R cause for concern. So, I don't think it has been established that they made the payments without a reasonable basis to believe the investment and/or X was legitimate.

Any other considerations?

I don't think HSBC could've taken any other action in order to prevent Mr and Mrs R's loss, either at the time the payments were made or when the scam was reported to them. I say this as I don't think they'd have been able to identify that this was a scam at the point of the payment, given the sophistication of the scam.

Further to this, HSBC wouldn't have been able to have recovered Mr and Mrs R's losses from the beneficiary bank at the time the scam was reported to them, given that the company had entered liquidation and no funds could've been returned by the beneficiary.

HSBC have highlighted that Mr and Mrs R had previously invested in X in April 2019 and received returns related to that investment prior to the transactions complained about in this case. It should be noted these were mentioned to our service but Mr and Mrs R recognised these were not covered by the CRM Code due to them pre-dating the inception of the Code. And this is why they did not include them within this complaint.

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 Miss R is now complaining to us about in connection with the activities of HSBC.

As I have determined that this complaint should be upheld, Mr and Mrs R 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 and Mrs R has already made a claim at FSCS in connection with X, and in the event the FSCS pays compensation, Mr and Mrs R are required to repay any further compensation they receive from her 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>)”

Redress.

As Mr and Mrs R received a number of monthly interest payments back from the car lease company, I think it would be fair for these payments to be deducted from the amount HSBC reimburses them.

The CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. I therefore think HSBC should have responded to Mr and Mrs R’s claim and refunded their losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so, I think HSBC should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

In order to avoid the risk of double recovery the HSBC is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund Mr and Mrs R the payments they made as a result of this scam, less the payments they received back from X, this totals £44,236.16.
- Pay Mr and Mrs R 8% simple interest on the £44,236.16, from 15 days after 19 January 2024 until the date of settlement.

If HSBC UK Bank Plc considers that it’s required by HM Revenue & Customs to deduct income tax from the interest I’ve awarded, it should tell Mr and Mrs R how much it’s taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R and Mr R to accept or reject my decision before 21 January 2025.

Rebecca Norris

Ombudsman