

The complaint

Mr and Mrs W complain that HSBC UK Bank Plc, trading as first direct, won't refund the money they lost when they were the victims of what they feel was a scam.

What happened

In November 2020, Mr and Mrs W were told about an opportunity to invest in a company they had invested with before, which leased cars. They were told their investment would be used to fund vehicles which would then be leased out and that they would receive fixed interest payments each month. And, after checking the company's website and online reviews, they decided to invest and made a payment of £56,000 from their HSBC account to account details they were given for the company.

Mr and Mrs W received the monthly interest payments they were told they would until January 2021, but the payments then stopped. And when Mr and Mrs W found out the company had gone into administration, they reported the payment they had made to HSBC as a scam and asked it to refund the money they had lost.

HSBC investigated and initially said this appeared to be a dispute between Mr and Mrs W and the company. Mr and Mrs W weren't satisfied with HSBC's response, so referred a complaint to our service. Since the case has been with our service, HSBC has now also said the car leasing company, and other associated companies, are under investigation by statutory bodies and so these investigations should be allowed to finish before an outcome is reached on the complaint.

One of our investigators looked at the complaint. They didn't think it was fair to delay the outcome of the complaint. They also said they thought the circumstances here met the definition of a scam and they were satisfied Mr and Mrs W had no reason to suspect the investment wasn't legitimate. So they recommended HSBC refund their losses in full. HSBC 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.

Can HSBC delay making a decision under the CRM code?

HSBC has argued that the payment Mr and Mrs W made is the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse them. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And HSBC only raised this after the case was referred to our service and it had already reached a decision on Mr and Mrs W's claim in its final response letter to him, when it said the company had no intent to scam them at the time the payment was made and this was a civil dispute. So I don't think HSBC can now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website.

The Lending Standards Board has also said that the code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for some time, I don't think it's fair for HSBC to delay making a decision on whether to reimburse Mr and Mrs W any further.

HSBC has argued that SFO investigations are based on different considerations, which do not include an assessment of whether the CRM code definition of a scam is satisfied. But I disagree that our service has conflated the charging of the directors with the conclusion that Mr and Mrs W have been the victim of a scam. The charging of the directors is merely one of the pieces of evidence which I feel helps demonstrate that it is fair to now reach a decision on whether to reimburse Mr and Mrs W.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against the car leasing company's parent company. More information about the FSCS's position on claims submitted against the parent company can be found on the FSCS's website.

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

As I'm minded to uphold this complaint for the reasons given below, Mr and Mrs W should know that as they will be recovering compensation from HSBC, they cannot claim again for the same loss by making a claim at the 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 the FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr and Mrs W have already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, Mr and Mrs W are required to repay any further compensation they receive from their complaint against HSBC, up to the amount received in compensation from the FSCS.

Our service and the FSCS operate independently, however in these circumstances, it's important that we and the FSCS are working together and sharing information to ensure that fair compensation is awarded. More information about how we share information with other public bodies can be found in our privacy notice on our website.

Whilst the FSCS may be taking on these cases against the parent company as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

HSBC has also suggested that the FSCS process should be allowed to run before any complaints are determined. However, while our service has sometimes dismissed cases as better suited to another scheme, that is usually only where the complaints brought to us are against the same business the FSCS is accepting claims about – which isn't the case here. This complaint is against HSBC for non-payment of a claim under the CRM code, whereas the FSCS is accepting claims against the car leasing company's parent company.

The FSCS is also the fund of last resort, and so should be the final place someone goes to for redress. Therefore, we would not necessarily expect customers to go to the FSCS before going to their bank. And our service has an obligation to investigate complaints brought to us.

Have Mr and Mrs W been the victim of a scam, as defined in the CRM 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 and Mrs W 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 car leasing 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 they've told us, I'm satisfied Mr and Mrs W made the payment here with the intention of investing with the car leasing company. They thought their funds would be used to purchase vehicles which would then be leased out, and that they would receive returns on their investment. And I haven't seen anything to suggest that Mr and Mrs W didn't think this was legitimate.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payment it had agreed with Mr and Mrs W.

Mr and Mrs W appear to have been led to believe their capital would be used to fund specific vehicles, which would be secured in their favour until the leases were repaid. The

promotional material they've sent us refers to the investment as 'asset-backed' and frequently refers to the investor's car or the car they have funded. And Mr and Mrs W were given a vehicle funding form, which states they have funded four units and the make of the specific vehicles will be confirmed later.

But there's no record at Companies House of any charge in Mr and Mrs W's favour over any vehicle with the company following their investment. And the Financial Conduct Authority (FCA)'s supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way I think Mr and Mrs W were led to believe theirs would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

So I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr and Mrs W to believe they were making. And so the purpose the company intended for the payment Mr and Mrs W made wasn't aligned with the purpose Mr and Mrs W intended for the payment.

HSBC has said it doesn't accept that the purpose of Mr and Mrs W's payment was fraudulent simply because they didn't receive security over any vehicles. But, as I've explained above, the lack of security isn't the sole reason I'm satisfied this investment meets the CRM code definition of a scam – it was merely one of the many factors taken into account.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr and Mrs W and the company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam from the CRM code.

HSBC has argued that the CRM code was not created with this type of investment scheme in mind. But the code doesn't set out which type of investments would be covered if they later turn out to be a scam. So I don't agree that the CRM code shouldn't be applied here on that basis.

HSBC has also argued that the car leasing company had been operating since at least 2014 and that it is improbable that it could have been operating with the intention to defraud for so long without this becoming apparent earlier. But I disagree that there is a time limit by which

fraudulent schemes like this will necessarily become apparent. And, in any event and for the reasons I've explained, I am still satisfied Mr and Mrs W have been the victim of a scam here.

Are Mr and Mrs W entitled to a refund under the CRM code?

As I explained above, HSBC is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr and Mrs W fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

From what I've seen, the communication Mr and Mrs W had with the car leasing company and the documents they received about the investment all appear to have been relatively professional and looked legitimate. The way Mr and Mrs W were told the investment would work doesn't appear to be suspicious and the returns they were told they would receive don't appear to be too good to be true. And it appears the company had been operating for several years, one of the connected companies was authorised and regulated by the FCA, and a number of previous investors – including Mr and Mrs W themselves – had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Mr and Mrs W significant concern, or that HSBC has established that they made the payment without a reasonable basis for belief that the investment was legitimate.

HSBC also hasn't suggested that Mr and Mrs W ignored an effective warning when they made the payment to the car leasing company. So I don't think HSBC has established that Mr and Mrs W ignored an effective warning in relation to the payment either.

And so I don't think HSBC has established that any of the exceptions to reimbursement under the CRM code apply here, and so it should refund the money Mr and Mrs W lost in full.

Redress

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

HSBC has questioned whether Mr and Mrs W received any further returns following their investment in November 2020. But from what I understand, investors usually stopped receiving returns from the car leasing company in early 2021. And Mr and Mrs W have said they received returns in December 2020 and January 2021 but didn't receive any further returns after that. And the two interest payments of £1,069.44 I've seen evidence of them receiving match what the vehicle funding form they signed said they would receive. While I don't have means of accessing all of the accounts held by Mr and Mrs W at other banks, I

don't think the evidence suggests any further returns were received. And so I'm satisfied their loss was £53,861.12.

I also don't think any action I would've expected HSBC to take would have prevented Mr and Mrs W making the payment to the car leasing company, as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payment would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for HSBC to initially decline Mr and Mrs W's claim under the CRM code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think HSBC should have responded to Mr and Mrs W'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.

My understanding from the administrator's statement about the car leasing company and connected companies is that the company owed over £40 million to investors that it was unable to pay – and that this far outweighs its assets. So it is far from certain that complainants will receive anything back at all. But it is possible Mr and Mrs W may recover some further funds in the future so in order to avoid the risk of double recovery, if it wishes, HSBC is entitled to take 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, trading as first direct, to:

- Refund Mr and Mrs W the £53,861.12 loss they suffered as a result of this scam
- Pay Mr and Mrs W 8% simple interest on that refund, from 15 days after 19 January 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 28 March 2025.

Alan Millward

Ombudsman