

## Complaint

Mr F is unhappy that HSBC UK Bank Plc didn't reimburse him after he told it he'd fallen victim to a scam.

## Background

Mr F says that he fell victim to an investment scam in early 2021. He invested his money under a scheme where investors were to provide the funds for the acquisition of new vehicles. Those vehicles would then be leased to members of the public. The proceeds would benefit the investor. The company told investors that they'd receive monthly payments for 36 months. In month 37, the leased car would be returned the company.

Mr F's representatives say he was told that the investment was "*asset backed*" – in other words, his funds were associated with and secured against a specific vehicle. That meant his investment was theoretically safer. In February 2021, he made payments to a total value of £14,000. This was in connection with one specific agreement and, according to the paperwork that accompanied his investment, this was sufficient to fund "*one unit*."

Unfortunately, things didn't go according to plan. The company later failed and Mr F determined that he must've fallen victim to a scam. He complained to HSBC, but it didn't agree to refund his losses. It said that it considered that this was a legitimate investment that had failed, rather than a scam.

Mr F wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. HSBC disagreed with the Investigator's view. It said that the Investigator had attached too much significance to whether Mr F had been granted a charge over a specific vehicle. One of the progress reports published by the administrator said that they'd found there were multiple categories of investor in this scheme – some were granted security over specific vehicles and others weren't. If Mr F didn't benefit from his investment being secured in that way, it isn't necessarily an indication that the company defrauded him.

It also pointed out that, although criminal charges had been brought in connection with this company, nobody had been convicted and so it was premature to assume that what happened to Mr F was fraudulent. Finally, it queried whether or not there was a particular point in time at which the Investigator had decided the company transitioned from being legitimate to fraudulent.

Since HSBC disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. HSBC has signed up to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). That Code requires signatories to pay refunds to victims of authorised push payment ("APP") scams in all but a limited set of circumstances.

The CRM Code doesn't cover all payments. For these payments to fall within its scope, they must meet the relevant parts of the CRM Code's definition of an APP scam. HSBC has argued that the evidence isn't strong enough to say that this was an APP scam, rather than a private civil dispute, and that it would be premature to conclude otherwise. It's important to note that there are a number of potential reasons (other than an APP scam) for a company to fail to meet its contractual obligations. That might happen, for example, where a business has a problem with cashflow. A business can fail or be mismanaged so that its promises aren't kept. That doesn't necessarily demonstrate an intention to commit fraud (which is what is needed to show that the CRM Code should apply). Instead, for a payment to be covered, it must meet the Code's definition of an APP Scam. In this context, that would require that the purpose for which the company procured the payments was different to what Mr F believed due to dishonest deception.

The key factor is what the intentions of the company were at the time of the payments. I obviously can't know what was in the mind of the individuals selling the investment to Mr F at the time. I have to infer what those intentions most likely were from what the other available evidence shows. I also need to be able to exclude, on the balance of probabilities, the alternative possibility that this was simply a matter of the company breaching its legitimate contract for a legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that the company set out to defraud Mr S with criminal intent.

That is a high bar to meet. Nonetheless, I'm satisfied that the evidence shows that this was a scam and I'll explain why. I understand Buy2Let Cars told many potential investors that their funds would be allocated to specific cars and a legal charge would be granted over the specific vehicle acquired. The FCA's supervisory notice to one of the connected companies said that, while the companies had around 1,200 investors, they had charges secured against only 69 vehicles. In other words, the overwhelming majority of the cars acquired by Buy2Let Cars weren't secured in this way.

HSBC has pointed out that the administrator's report says that there were multiple classes of investor. Some of them were granted security over a specific vehicle and some weren't. We know that many investors were told that their funds would be secured in that way, but it shouldn't be taken for granted that was the case with Mr F. Mr F's written complaint says that he was told that his investment would work in that way. He's only been able to provide a limited amount of documentary evidence of his investment. However, it's significant that the paperwork includes a section in which the manufacturer, model and registration of the car connected to the funds could be recorded. On the paperwork that Mr F completed, this says "TBC" in lieu of any specific details. That supports Mr F's recollection that it was the *intention* that the agreement be connected with a specific vehicle to be confirmed at a later date.

I also think that, given Mr F made his investment so close to the point at which Buy2Let Cars went into administration, the chances that his investment was ever secured against a

specific vehicle are close to zero. For the same reasons, I don't think it's necessary to identify a specific point in time at which the activities of this company started being fraudulent. If it were possible to draw a line in the sand in that way, given the fact that Mr F's investment came in the last weeks of the company's operation, these payments would certainly have come after that date.

The FCA also checked a sample of the vehicles against the DVLA database. It found that a large proportion of these vehicles were second hand. This was inconsistent with the way the company explained its operating model which relied on it securing significant discounts on new cars. It also found other inconsistencies. Some leases started before the first registration of their associated vehicles. For some, the associated vehicle doesn't appear to have existed on the DVLA database at all. The FCA also said the company valuation of their stock of vehicles wasn't at all realistic.

For these reasons, I think the evidence shows the company wasn't operating in the way Mr F had been told it would. The features of the investment he believed he was making were absent. The purpose for which the company procured the payments from him was, therefore, not aligned with the purpose Mr S had in mind for those payments. The SFO has also said that the former company directors are accused of providing investors with false information when encouraging people to invest. In the light of that, I'm persuaded that it's more likely than not that the discrepancy between the company's purpose in procuring the payment and Mr F's in making it was the result of dishonest deception on the part of the company. As a result, I'm satisfied the circumstances here meet the definition of an APP scam under the CRM code.

#### *Should Mr F be reimbursed under the CRM Code?*

I've gone on to consider whether HSBC was required to reimburse Mr F under the terms of 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 F fell victim to, in all but a limited number of circumstances. It is for the firm to establish that one of the 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; or
- The customer made the payment without a reasonable basis for believing that:
  - the payee was the person the customer was expecting to pay;
  - the payment was for genuine goods or services; and/or
  - the person or business with whom they transacted was legitimate.<sup>1</sup>

From the evidence I've seen, Mr F wasn't shown a warning when he made these payments and so the first exception isn't applicable. I've also considered whether Mr F made these payments with a reasonable basis for believing the investment was a legitimate one. From what I've seen, the communication he had with the company and the documents he received about the investment all appeared professional and legitimate. That is reflected in the same information received by other victims of this scam.

The way Mr F was told the investment would work isn't inherently problematic and he wasn't promised returns that were objectively too good to be true. In addition to that, the company had been operating for several years and its partner company was authorised by the FCA. Overall, I'm not persuaded there was anything about the investment that should have

---

<sup>1</sup> There are other exceptions under the CRM Code, but they don't apply here.

caused Mr F significant concern. It follows that HSBC should reimburse him under the CRM Code.

### *Other issues*

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 S is now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld Mr F should know that as he will be recovering compensation from HSBC, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount he recovers from HSBC he 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 F has already made a claim at FSCS in connection with Raedex, and in the event the FSCS pays compensation, Mr F is required to repay any further compensation he receives from his 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>

### **Final decision**

For the reasons I've explained above, I uphold this complaint.

If Mr F accepts my final decision, HSBC UK Bank Plc needs to refund the payments mentioned above. It should also add 8% simple interest per annum to those payments calculated to run from 9 February 2024 until the date any settlement is paid. It's possible that funds could be recovered at a later date via the administrators and HSBC is entitled to ask Mr F to sign an indemnity to cover this eventuality.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 March 2025.

James Kimmitt  
**Ombudsman**