

The complaint

C complains that HSBC UK Bank Plc did not reimburse the money it lost to a scam.

What happened

C's director, Mr H, saw an individual boarding up a property near Mr H's home. He had concerns that the land was going to be turned into a commercial lot with restaurants and a petrol station. The individual, who I will refer to as SF for the purposes of this decision, said he intended to buy the land and offered for Mr H to own part of it. Mr H agreed and initially paid £23,000 as a refundable deposit to secure the right to acquire three acres of the land. However, after this SF gave various reasons as to why more and more funds were needed.

Mr H sent a total of £544,699 between October 2022 and April 2023, and around £460,000 of that came from C's business account. Despite paying this money, Mr H still did not have ownership of any of the land and eventually he realised he had been the victim of a scam. He raised a scam claim with HSBC who issued a final response letter in February 2024. HSBC felt they had sufficient fraud measures in place at the time and did not think Mr H had a reasonable basis to believe SF was genuine, as he did not appear to have checked SF was actually purchasing the property or to have engaged a solicitor in the process. So, they did not agree to refund C or Mr H.

The complaint was referred to our service and our Investigator looked into it. They explained that they did not think C had suffered a financial loss that HSBC had to reimburse. This was because they had seen no evidence to show that this was a business investment made by C, and the fact payments to SF were made from two separate limited company accounts as well as Mr H's own personal account supported that this was actually a personal investment by Mr H that he used company funds for. So, they thought it was more likely Mr H owed C the money as he had essentially taken out a loan from C to make the payments.

Mr H's representative disagreed with the outcome and said this was a business investment and they provided an e-mail from C to SF in which it asked for the property to be registered in C's company name.

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.

C says that it has suffered a loss due to the property investment scam. In order for me to determine whether C has actually suffered as loss, I have to consider if it is more likely Mr H intended for this to be a business investment for C, or if Mr H used C's company funds for personal use, therefore essentially taking a loan from C. If this is the case, Mr H will be the one who owes C the funds, instead of any potential reimbursement HSBC may be liable for. To assess this, I have carefully reviewed all of the evidenced provided to me by both parties.

I have firstly considered the communications I have been provided between Mr H and SF. Looking at this, I have seen nothing to indicate Mr H intended for this to be a business investment for C. I note that in December 2022, Mr H said in a message to SF that he was not really looking to make money on the purchase, and he did not know if he was going to sell the land or keep it for himself. This does not suggest that he was intending for this to be a profitable investment, and importantly there was no mention in the messages of this being linked to C at that time.

I note that the initial e-mail Mr H sent to SF in December 2022 that set out the agreement for the deposit to purchase three acres of the land was sent from Mr H's personal account and not C's business account. And there was no mention of this being linked to the limited company in any way.

According to Companies House, I can see that Mr H was not added as a director of C until 31 December 2022, which was around two months after he agreed to purchase part of the land with SF. I think this further indicates Mr H was intending for this to be a personal purchase that he was using C's company funds for, instead of a business investment on C's behalf.

C's representative has highlighted that the court order against SF names both Mr H and C as victims that require reimbursement. They therefore think this evidenced C has suffered a loss. But, I also note in the court document it specifically states a number of the payments involved in the scam were paid by C, on behalf of Mr H. This therefore indicates Mr H was using C's funds for his own personal use.

C's representative has also provided an e-mail dated 16 February 2023, from C's e-mail address to SF, in which C asked for the property to be registered in its name. They have said this evidences that this was a business investment and that the returns were intended to be received and owned by the limited company. They have also said the intention was to renovate the properties and any rent would then be shared by C and another limited company in Mr H's name.

While I can see there was an intention for the land to be registered in C's name, there is still no other surrounding evidence showing the returns would be received by C. Looking at the sealed particulars of the claim and the court judgement, it states that on around 26 January 2023 due to the values involved in the sale, the agreement would now be between SF and C. This suggests the payments up to that point were an agreement between SF and Mr H, further indicating that the initial intention was for this to be a personal purchase made by Mr H with C's funds.

The court documents also state that C agreed to purchase three parcels of the development land by way of a sub-sale. Typically a sub sale includes an agreement for one party to purchase a property, as well as a secondary agreement for that same party to sell the investment immediately to a third party. The documents do not clearly set out who the third-party was that intended to purchase the land. But considering this, I think it is more likely C did not intend to keep the land and rent it out for profit as it's representative has indicated. And on balance, I still have not seen enough to be satisfied C intended to purchase the property for a business investment.

On the balance of probabilities, having carefully considered everything available to me, I think it is more likely Mr H used C's company funds for personal use when it sent funds to SF and effectively took out a company loan. I therefore think that rather than HSBC potentially owing any redress to C, it is Mr H that owes the funds to C. As a result, I do not think HSBC needs to reimburse C in the circumstances.

My final decision

I do not uphold C's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 12 May 2025.

Rebecca Norris

Ombudsman