

## **The complaint**

Mrs W made payments towards an investment that she now considers to have been a scam. She wants HSBC UK Bank Plc to refund the money that she's lost.

Mrs W has also complained to the banks which received the money she sent. I have considered those complaints separately. This decision considers her complaint about HSBC only.

Mrs W has made her complaint with the help of a professional representative. For ease of reading, I'll mostly refer to Mrs W throughout my decision. I intend no discourtesy by taking this approach.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll provide an overview of some of the key events. Mrs W explains that she was told about an investment opportunity by a friend who referred her to a director of a wealth management company which I'll refer to as A.

Mrs W met the director of A in person and believed that she was investing in low-risk UK businesses. She says she thought the returns would be between 10% and 12%. Between 2017 and 2021, Mrs W followed the director's instructions and made a number of investments totalling £345,000. Mrs W's records show that she sent 13 bank transfers and issued five cheques.

Between 2017 and 2023 Mrs W received some of her initial investments back, along with some interest payments. When these amounts are taken into account, Mrs W's records show she has received back just over £47,000 less than she'd invested overall. At the time Mrs W believed she was making the payments towards investments, but now she is unsure of what the investments specifically were or whether any of them were ever real. She now believes the director was operating a fraudulent ponzi scheme, paying returns from capital derived from new investors rather than from legitimate investment profits.

Mrs W has highlighted that the returns received from A became sporadic and the director would make excuses, providing cryptic updates on how the investments were performing and using jargon. The director promised Mrs W that she would receive all of the money she'd invested back by the end of May 2023. When she did not, Mrs W researched the director online and discovered that in the past he'd been linked to other businesses that had mis-sold investments.

In July 2023, Mrs W complained to HSBC. As HSBC was not able to complete its investigation in time, Mrs W referred the complaint to us.

Our Investigator looked into the matter but didn't recommend the complaint should be upheld. She explained that HSBC was a signatory to the CRM Code, which can give additional protection from scams in some circumstances. She noted that the CRM Code doesn't apply to private civil disputes and was not persuaded that Mrs W had been the victim

of a scam as the CRM Code requires. She wasn't as sure as she would need to be that A set out with an intent to defraud Mrs W. She thought about whether HSBC had missed opportunities to look out for out of character or unusual transactions, but wasn't persuaded that proportionate questioning by the bank would have identified any concerns at the time the payments were being made. She noted that Mrs W was receiving returns, that she was dealing with the director of A in person, and that A was registered on Companies House.

Mrs W disagreed that the director of A was acting in any legitimate capacity and highlighted that a number of people she knew had also lost money. She said the director has a documented history of targeting vulnerable clients and he would have known what he was doing was wrong. Mrs W's representatives said that the director of A guaranteed unrealistic returns that never materialised and applied pressure on investors not to go to the authorities. They said that there is no proof that any funds were used for their intended purpose and the lack of evidence of any investment should be admissible as evidence in and of itself.

As no agreement could be reached, the complaint was referred to me.

#### *My further investigation*

When the complaint was referred to me, I contacted Mrs W's representatives and asked for further information. I pointed out that the first payment was made in 2017 and returns were received until mid-2023, but the only documentary evidence on file was a loan note for £90,000 from June 2019. Given that Mrs W thought that she was investing £345,000 across this period, I expressed surprise that there really wasn't anything more.

I highlighted what Mrs W's representatives had said about a lack of evidence of any investment being admissible as evidence in and of itself. But I explained that it was very difficult to establish what return related to what investment with no paperwork or evidence of the messages exchanged between Mrs W and A. I also pointed out that the returns Mrs W received after the CRM Code came into force outweigh the funds she sent during the time the CRM Code covers.

Mrs W responded with a spreadsheet breaking down the payments she'd made and amounts she'd received back. Mrs W explained that the various investments were taken out on loan notes on the understanding that all of her money would be paid back at the end of May 2023. With the support of a family member, she provided copies of WhatsApp conversations with A's director from 1 April 2020 to 10 October 2023. In addition, I was provided with a Gazette notice for A dated February 2023.

Mrs W's representatives pressed that the victims were inexperienced, and everything had been done in person. They said the losses could have been prevented if Mrs W had been prompted to check the validity of who she was speaking to as suspect information about the director of A was in media reports as far back as 2018. The representatives explained that Mrs W has suffered a loss overall, and all of the fictitious reasons that she was given for the investments should be irrelevant. They explained how much stress this situation had placed on Mrs W and said all the payments should be treated as one single scam.

As Mrs W has provided everything that she can, I must now go on to make 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.

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. It isn't in dispute that Mrs W authorised the transactions in question. She is therefore presumed liable for the loss in the first instance.

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. At the time that Mrs W made some of the payments, the CRM Code was in force.

HSBC is a signatory of the Lending Standards Board's 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 CRM Code where they have been the victim of an APP scam – as defined within the CRM Code. So if I am not persuaded that there was a scam, then I will not have a basis to uphold the complaint.

The relevant definition of a scam in accordance with 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, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Mrs W has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose she intended for the payment she made was legitimate, whether the purposes she and A intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of A.

Unfortunately, it's not possible to know with certainty what A's intentions were when Mrs W made her payments – but before I can consider whether HSBC is liable for any of Mrs W's losses, I'd first need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mrs W and the director of A. That also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of A breaching its legitimate contract with Mrs W through financial mismanagement or other reasons. Or to put this another way, that means deciding whether the available evidence shows it is most likely that A set out to defraud Mrs W with criminal intent. That is a high bar to meet.

Mrs W's position is that the situation is so clearly a scam and she's highlighted information that calls the integrity of A's director into question. I appreciate Mrs W's point that A's director has been linked to other businesses associated with mis-selling, or where concerns have been raised with other relevant schemes. I'm also aware that there is an ongoing Police investigation into the director of A. While there may be merit to Mrs W's concerns regarding businesses associated with A, there may also be other, equally possible reasons for A failing to meet its agreement with Mrs W here that haven't been yet ruled out. It's also my understanding that further action hasn't yet been taken by the Police against any parties involved in relation to this investment.

One of the key issues here in determining whether a scam has taken place is that the purpose for payments wasn't clearly defined. Mrs W has provided what she can, but there's very little detail about the purpose of the payments Mrs W was making. Mrs W had already

made nine payments before the WhatsApp messages she's recently provided began. She refers to "*the 6 monthly interest investment*", but this does not shed any light on how Mrs W's money was to be used or what specifically she thought she was investing in. The loan note that I've seen states what returns Mrs W should receive, but it does not indicate where or how Mrs W's money should be utilised. Therefore, in essence, there is no concrete information I can refer to when concluding that the actions A took with Mrs W's money *didn't* align with what was agreed.

In cases where there's a clear agreement between parties on where money is to be invested, it's somewhat simpler to review what *did* happen to those funds and conclude whether the intended payment purpose was met, but as this didn't happen here, it's difficult to determine - even with the benefit of hindsight and reviewing beneficiary statements – that funds were illegitimately moved on in a way that proves A's intention was to never return funds as agreed to Mrs W. I say this being mindful that Mrs W did receive over £186,000 of her original investments back along with over a further £111,000 that she was told was interest. By mentioning this, I am not downplaying that Mrs W has still lost over £47,000 of the money she originally invested, as well as the loss of opportunity to grow her capital to provide security for her future, but I am highlighting that I cannot be as sure as I would need to be that A intended to commit an APP scam.

Mrs W also raised concerns that A wasn't registered with the Financial Conduct Authority. However, a business doesn't need to be regulated to issue a loan note and so this act, in and of itself, isn't sufficient to conclude that A acted outside of regulatory requirements.

Ultimately, without clearer evidence of how Mrs W's money *ought* to have been utilised, it becomes difficult to determine that A deceived her with intent from the outset for actions it subsequently took.

I appreciate how frustrating and disappointing this answer will be. Mrs W has lost a lot of money as a result of this investment and the situation has clearly had a detrimental impact on her mental health. But I can't exclude the possibility that A entered the arrangements in good faith, intending to fulfil its obligations and then was unable or unwilling to fulfil the agreements for some reason. The evidence doesn't allow me to conclude, when weighing up these alternative possibilities, that it's more likely A intended to steal her money from the outset and never had any intent of fulfilling the arrangements in full or in part.

That means that I can't fairly hold HSBC responsible for the loss Mrs W has suffered. I can't fairly tell HSBC to pay her the money she's lost, because I don't think it has treated her unfairly or was otherwise at fault here. This also means I can't fairly comment on whether HSBC ought to have intervened in any payments Mrs W made, as I haven't ultimately determined that they were scam payments.

Future police investigations may uncover new evidence or change the basis on which this case has been considered up until now. However, I have to decide the case on the facts and information currently available to me. Based on the evidence currently available, I'm not able to conclude there is sufficiently persuasive evidence that shows HSBC was wrong in failing to provide Mrs W with a refund for her losses. Even if I were to find otherwise, it isn't clear to me that it would be possible to establish any loss that would be covered by the CRM Code.

If new material information does come to light, at a later date, then a new complaint can be made to HSBC. But as things stand, for the reasons I've explained above, I cannot fairly and reasonably require HSBC to refund the remainder of Mrs W's loss.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 March 2025.

Claire Marsh  
**Ombudsman**