

## **The complaint**

Mr and Mrs C complain that HSBC UK Bank Plc didn't do enough to protect them when they made payments to a property investment opportunity that they now consider was a scam.

In bringing their complaint to this service Mr and Mrs C are represented, but for ease of reading I will refer to Mr and Mrs C throughout this decision.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In or around September 2018, Mr and Mrs C were looking for an investment opportunity and saw an advertisement for one that interested them, with a company that I'll refer to as "H". Mr and Mrs C checked that the company were registered and satisfied with what they saw, called the company in the advertisement.

A representative of the company then visited Mr and Mrs C to discuss the investment opportunity further. Mr and Mrs C were told they could expect to receive a percentage return each year, along with any bonus entitlements. Believing everything to be genuine, on 4 September 2018, Mr and Mrs C made two payments to H, for £10,000 each, from the account they hold with HSBC.

Mr and Mrs C did receive some returns from H, but not the full amount expected, and H went into administration in 2021. Mr and Mrs C now say the investment wasn't genuine and that they're the victims of a sophisticated scam.

In May 2024, Mr and Mrs C complained to HSBC, but it didn't uphold their complaint. In summary, HSBC said that in making the payments it had carried out Mr and Mrs C's instructions, in line with its legal obligation and process at the time. It added it didn't consider they were the victim of a scam and instead said what had happened was deemed a civil dispute. Alongside this, it said the funds were sent prior to the introduction of the Contingent Reimbursement Model (CRM Code), which came into force on 28 May 2019.

Unhappy with HSBC's response, Mr and Mrs C brought their complaint to this service. One of our Investigator's looked into things, but didn't think the complaint should be upheld. In summary, they said they hadn't seen sufficient evidence this was a scam. Our Investigator also said that even if HSBC had intervened, they didn't think it would have made a difference and led to HSBC refusing to put the payments through.

Mr and Mrs C didn't agree with our Investigator's view. In summary, they maintained that their complaint should be upheld and say that HSBC failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principles. They said why they think H was operating a scam and a Ponzi scheme. In particular, Mr and Mrs C have referred to high commission rates of as much as 35% paid to introducers and to high return rates of up to 15%.

As agreement couldn't be reached, the complaint has been passed to me for a 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.

Mr and Mrs C have made some detailed submissions in support of their complaint. I've read and considered everything they have sent in, but I don't intend to respond in similar detail. I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

HSBC was a signatory to the CRM Code. This is a scheme through which victims of scams could (in certain circumstances) receive reimbursement from the banks involved. But it isn't applicable to this complaint, as the CRM Code wasn't in place at the time of Mr and Mrs C's payments. So, it can't be used as a basis to expect more from HSBC.

Having thought about everything carefully, I've come to the same conclusions as our Investigator, and for much the same reasons.

Banks have various and long-standing commitments to be alert to fraud and scams and to act in their customers' best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether H was operating a scam as Mr and Mrs C allege.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud. Some merchants may have used sales and promotional methods that could be seen as unfair by consumers considering the losses they've incurred – but this does not always amount to fraud.

In making my judgment on this, I'm conscious H completed three separate developments. It was also working on other projects which it sold on to other developers when it ran into financial difficulty. These actions are indicative of a company operating legitimately.

At the time of the payments, H was a limited company that had been incorporated and operating since 2011. And although they later went into administration (long after Mr and Mrs C's payments), at the time of the payments, they had been filing their accounts online, broadly as would be expected. I'm aware H hasn't filed accounts since 2019, and it went into administration in 2021. But financial mismanagement isn't enough to show it was not intending to use the funds for development projects. To the contrary, projects were being worked on/completed during the period when H wasn't filing accounts.

Mr and Mrs C's representatives argue the high commission paid to unregulated introducers is an indicator of fraud. But I don't think the lack of regulation by the introducers, nor the use of commission, is enough to show H wasn't intending to use the money it received to fund building projects.

I appreciate some investigations are ongoing. But at this point in time, I haven't seen any persuasive evidence from H's liquidator, or any other external bodies, to show H was taking transactions for developments which it had no intention of completing. Ultimately, the information we currently hold suggests that H was a failed investment venture, not a scam. As I'm not sufficiently persuaded H was operating a scam at the time, I can't reasonably say there would have been a reasonable expectation for HSBC to have intervened in Mr and Mrs C's payments before they were sent.

For the purposes of this decision, even if I were to accept that what has happened was a scam (which for the avoidance of doubt and for reasons explained above I don't), I'm not persuaded that I would reach an outcome that would lead me to ask HSBC to refund Mr and Mrs C. I'll explain why.

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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account. But that isn't the end of the story. Good industry practice required that HSBC be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

However, in the individual circumstances of this case, given the factors I've explained above and the information that would've been available at the time, I'm not persuaded that any level of intervention that could fairly have been expected of HSBC would've uncovered any meaningful negative information, such that Mr and Mrs C wouldn't have continued with their payments. I say that as, at the point the payments were being made, H was a legitimately registered company and there wasn't anything in the public domain at the time to suggest HSBC should've been concerned that Mr and Mrs C might be falling victim to a scam.

Alongside this, while it hasn't been provided by Mr and Mrs C, I've seen some of the promotional literature which was given out for the investment with H. It's persuasive and comprehensive information for investors which sets out how it operates, and the returns expected. It seems highly unlikely that a conversation with HSBC would've prevented Mr and Mrs C going ahead with the investment when they would've held this kind of information and when considering their belief in H at that time also.

HSBC wouldn't have been aware what would happen with regards to their losses and the company, and it wasn't required to provide any investment advice. There is debate to this day (even with the benefit of hindsight and information that has come to light since) as to H's intentions when taking payments from Mr and Mrs C and others. So, I think it's highly unlikely anything conclusive would've been available at the material time.

Similarly, given the length of time (September 2018 until May 2024) between the payments being made and Mr and Mrs C approaching HSBC, alongside the fact that by that point, H had entered administration, I don't think anything HSBC did or didn't do would've impacted whether a recovery could've been made. I think it's more likely than not that any recovery efforts were destined to fail after such a long period of time.

I'm sorry to hear of what's happened to Mr and Mrs C and I have a great deal of sympathy for them. They have lost a significant amount of money and I don't doubt they have been let down by H. But I'm not persuaded this is something that HSBC can fairly be said to be responsible for. And it follows that there isn't a reasonable basis upon which I can require them to do more to resolve this complaint.

**My final decision**

For the reasons outlined above, 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 C and Mr C to accept or reject my decision before 29 July 2025.

Stephen Wise  
**Ombudsman**