

The complaint

Mr R complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In late 2021, Mr R was looking for ways to invest his money and came across an advert on a social media website for a company offering investments in artwork. He followed a link in the advert, filled in his contact details and was then contacted by someone from the company.

In this initial call, Mr R was told about how the art investment market worked and the estimated returns he could expect to receive on his investment. He was told the company could help him build a portfolio of limited-edition art prints which he would then be able to sell for a profit. He exchanged a number of further phone calls and emails with the company, and received promotional material about the investment. And as he thought the investment was genuine, he then made a number of payments from his HSBC account to purchase prints.

I've set out the payments Mr R made from his HSBC account below:

Date	Details	Amount
13 October 2021	Card payment	£1,500
14 October 2021	Bank transfer	£13,500
26 October 2021	Bank transfer	£9,096
26 October 2021	Card payment	£113.60
25 February 2022	Bank transfer	£2,000
24 March 2022	Bank transfer	£20,000
30 March 2022	Bank transfer	£11,264
14 April 2022	Card payment	£4,096
18 May 2022	Bank transfer	£15,900
19 May 2022	Bank transfer	£19,500

Mr R started to become suspicious about the company when he was receiving frequent requests to invest further and was given a number of different reasons why he was unable to sell any of the prints he had purchased. And he ultimately reported the payments he had made to HSBC as a scam and asked it to refund the money he had lost.

HSBC investigated but said the company was now in liquidation, Mr R had attended an event where he met members of the company and he had received a credit back into his account from them. So it said this was a civil dispute between Mr R and the company, rather than a scam, and didn't agree to refund the payments Mr R had made. Mr R wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence was enough to say the company had intended to defraud investors from the outset, and didn't think any intervention from HSBC would have identified significant concerns with the payments Mr R was making. So they didn't think HSBC should be required to refund the

money Mr R had lost. Mr R 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 the code does not cover card payments. And customers are only covered by the code where they have been the victim of a scam – as defined in the code.

As three of the payments Mr R made here were card payments, they are not covered by the CRM code. I've considered anything further HSBC should have done in relation to these payments later in this decision.

The remaining seven payments Mr R made here were bank transfers, which are potentially covered by the CRM code. And so I must consider whether Mr R has been the victim of a scam, as defined in the code.

Has Mr R 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 R has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the 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 he's told us, I'm satisfied Mr R made the payments here with the intention of purchasing artwork. He thought his funds would be used to purchase specific limited-edition prints, and that he would receive returns on this investment as the prints increased in value and were sold for a profit. And I haven't seen anything to suggest that Mr R didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the company intended a different purpose for the payments, or that Mr R's and the company's purposes for the payments weren't broadly aligned.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr R was told the company would arrange the storage of the prints he purchased in warehousing facilities it had access to. And I've seen records from one of these storage facilities, which shows that all the prints Mr R thought he had purchased were recorded as stored in that facility – and his name appeared on the inventory for each of the prints too.

So it appears that the prints Mr R agreed to purchase were genuinely purchased and were stored for him, as he understood they would be. And so it appears the money Mr R paid to the company was used for the purpose he intended it to be.

Mr R has made a number of arguments about why he believes this was a scam, including highlighting the findings of a recent court judgment in relation to the freezing of accounts connected to the company, a statement from the liquidator of the company, and an ongoing police investigation into the company.

And I appreciate that the recent court judgment provides strong evidence of the investment being misrepresented to investors – specifically that the company gave the impression that they were acting as a broker or intermediary, rather than a retailer of the art, and that the company would manage investors' portfolios and provide advice on what to buy and when to sell. The judge at the hearing also made several references to the possibility of the company intending to defraud customers.

However, the judge was also very clear that any argument about whether the company had intended to defraud investors was to be considered at a trial, and was not something that was within the remit of that hearing. So the judgment made no finding on whether the company had intended to defraud investors.

And so while investors may have a potential claim for misrepresentation and breach of fiduciary duty, I think the investors and the company still had broadly the same understanding of the reason for any payments – which was to purchase artwork. And any management of the investors' portfolio by the company was secondary to this.

The judge also acknowledged that the promotional material investors were given suggested the company made a profit by taking a percentage fee on sales and on any profit made on a sale, and didn't explain that the company was actually purchasing art at wholesale prices and selling on to investors at a significant mark-up – which averaged 495%.

But the value of any piece of artwork is a subjective matter, where artists and dealers will have their own opinions about the value of any particular piece and for which there is no strictly objective test. The judge was also presented with evidence that the company purchased artwork from artists and companies, at least one of which was entirely independent, and that it wasn't unusual for retailers to inflate the cost of art. And they again made it clear that the issue of the value of the artwork was to be considered at a trial, rather than this hearing. So I don't think a mark-up in price, even to this extent, is enough to demonstrate that a scam has taken place.

In the judgment the judge also mentioned that, contrary to what investors were told, there was no real secondary market for the prints the company was offering in this investment. The company did not make any genuine re-sales of prints and simply bought back prints from some investors who pushed for them to be sold. So there was no genuine increase in market value of the prints. But the judge again made it clear that the merits of whether there had actually been fraudulent activity was to be considered in a trial. And the standard the

judge was applying when deciding that there was a good arguable case for fraud on this basis is a lower standard than the one I must apply here. So I don't think the judge's finding that there was a good arguable case for fraud is the same as a finding that it is more likely than not that the true purpose of the investment was fraudulent or that investors had been scammed.

I'm also aware that the case is no longer going to trial, as a settlement was agreed between the company and the liquidator. And the liquidator has confirmed that the settlement involved no admission of liability by the company and that any amount paid by the company to the liquidator, or what any payment related to, was not disclosed. So, as there can be a variety of reasons for a settlement being reached that do not necessarily mean there was wrongdoing on either side, I don't think this settlement provides sufficient further evidence that the company intended to operate a scam.

I also understand there is an ongoing police investigation into the investment company. But I don't think an ongoing police investigation necessarily means that the company intended to operate a scam. I understand Mr R's argument that the police don't take action in most cases due to resource constraints and so an ongoing investigation suggests there is at least some evidence of fraud. But I don't think this is enough to say a scam has taken place, as I don't think an ongoing investigation can be taken to mean anything more than the police are looking into whether a crime has taken place. The police investigation here has not yet concluded, and so could still find that nothing untoward has happened.

Mr R has also raised that the owners of the company transferred money between connected companies and have been involved in a number of other companies offering similar kinds of investment or where similar complaints have been raised. But while I recognise this could suggest the owners weren't acting as I would usually expect a professional company to do, acting unprofessionally does not mean they intended to operate a scam. And I don't think any of these things mean the company here intended to operate a scam.

A statement from the liquidators of the company also confirms that artwork was purchased and that there was spending from the company's account for standard business expenses and genuine trading costs were incurred. And while I understand the liquidator is pursuing a claim for fraudulent trading and has stated that the company was being run to defraud creditors, I've not seen the evidence they have relied on so can't agree that it is enough to say on the balance of probabilities, at this stage, that a scam has taken place.

So I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud or the specific definition of a scam I must apply here. I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the company intended for these payments was different than the purpose Mr R intended. I think both Mr R and the company's intentions for the payments were the same – to purchase the specified artwork. And so I think HSBC has acted reasonably in saying the circumstances here don't meet the definition of a scam from the CRM code, and in not agreeing to refund the money Mr R lost from these payments as a result.

It's possible that material new evidence may become available at a future date, which suggests that the company did take these payments using dishonest deception. If that happens, Mr R can ask HSBC to reconsider his claim under the CRM code for these payments and, if not satisfied with its response, bring a new complaint to our service.

Did HSBC do enough to protect Mr R when he was making these payments?

As well as HSBC's obligations under the CRM code, the regulatory landscape, along with good industry practice, sets out other requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

And so I've also considered whether HSBC should have identified that Mr R could be at heightened risk of financial harm from fraud as a result of any of the payments he made here – including the card payments – and what difference any action I would have expected it to take as a result would have made.

But even if HSBC had identified that Mr R was at heightened risk of financial harm from fraud as a result of any of these payments, I don't think the checks I would've expected it to carry out would have uncovered significant concerns.

In these circumstances and given the size of the payments Mr R was making, I think it would be reasonable to expect HSBC's checks to include questions about the purpose of the payments and then relevant follow-up questions about the investment Mr R thought he was making and what checks he had done to satisfy himself it was genuine.

But Mr R thought he was purchasing artwork and would make money if the artwork increased in value and he sold it for a profit. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to HSBC.

Mr R had a number of phone calls and emails with the company, so his communication with them wouldn't have seemed suspicious either. And, when some of the later payments were being made, he had visited a gallery run by the company and spoken to people from the company there face-to-face – which will also have reassured both Mr R and HSBC that the company was genuine.

I've also seen copies of some of the promotional material the company issued about the investment, and I think this looked relatively professional and legitimate. So, if HSBC had asked to see any paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if HSBC had carried out the checks I would've expected when Mr R tried to make these payments, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to HSBC. And so I wouldn't have expected it to stop Mr R making the payments.

And so I don't think anything I would reasonably have expected HSBC to have done in relation to these payments would have prevented the loss Mr R suffered. I therefore don't think it would be fair to require it to refund these payments he made.

Should HSBC have carried out a chargeback for the card payments?

We expect banks to take reasonable steps to try to recover any money their customers have lost – including making use of any available chargeback scheme. So I've also considered whether HSBC did enough to try to recover the money Mr R lost.

A chargeback is a process by which card payments can be disputed with the merchant who took the payment. But the rules about the reasons why a payment can be disputed and the time limits for raising any dispute are set out in the chargeback scheme rules – which the bank must follow. And we'd only expect a bank to carry out a chargeback where there was a reasonable chance of it being successful.

The relevant scheme rules say that the time limit for raising a chargeback in Mr R's circumstances is 120 days from the date of the payment. But the last card payment Mr R made towards the scam was in April 2022, and he didn't report the scam to HSBC until June 2023 – which is more than 120 days after this last card payment. So the time limit for raising a chargeback claim had already passed when Mr R reported the scam, and so HSBC has acted reasonably in not carrying out a chargeback.

I sympathise with the position Mr R has found himself in and I appreciate that he has lost a significant amount of money. I'm also in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the company. But I can only look at HSBC's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold HSBC responsible for the money he lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 September 2025.

Alan Millward
Ombudsman