

The complaint

Mr A is unhappy that HSBC UK Bank Plc ('HSBC') hasn't refunded the money he believes he lost to an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well-known to both parties, so I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

Between October 2021 and July 2022, Mr A made four payments, totalling £143,500, to a business – which I'll refer to as 'Company D'.

Mr A says he understood that Company D was using his funds to buy gold, which Company D would use to make jewellery and sell for a profit. In return, Mr A was promised a monthly return of 2.5%. Mr A was receiving regular returns from Company D, but these stopped after his final payment, leading Mr A to believe that he's been the victim of a scam.

The police are currently investigating the directors of Company D and other individuals connected to the business. Some arrests have been made, but to date, no charges have been brought against any individuals.

Mr A reported the situation to HSBC and asked for a refund. HSBC said it couldn't make a reimbursement decision until the police investigation had reached a conclusion. Unhappy with HSBC's response, Mr A referred his complaint to this service.

Our Investigator considered Mr A's complaint but decided not to uphold it. They didn't think sufficient evidence had been provided to demonstrate Mr A had been the victim of an APP scam, which meant HSBC wasn't responsible for refunding Mr A's loss. However, our Investigator did say that if further evidence came to light later to show Company D was operating an APP scam, Mr A could ask HSBC to reconsider his claim.

Mr A didn't accept our Investigator's opinion. HSBC has since confirmed that it no longer thinks it's necessary to wait for the police investigation to conclude before reaching an outcome on Mr A's scam claim. HSBC now considers Mr A has a civil dispute with Company D and so HSBC isn't responsible for reimbursing Mr A's loss.

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

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.

Having done so, I've reached the same outcome as our Investigator. I'm sure this will come as a huge disappointment to Mr A, so I'll explain why.

At the time Mr A made the disputed payments, HSBC was signed up to the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). The CRM Code provided additional protection from APP scams, but only in certain circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code definition of an APP scam.

Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

"(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

There's been no suggestion made that Mr A was deceived into transferring his funds to a different person. So, DS1(2)(a)(i) doesn't apply in these circumstances.

To uphold Mr A's complaint under DS1(2)(a)(ii) of the CRM Code, I'd need to be reasonably satisfied that it is *more likely than not* that Company D received his payments for a fraudulent purpose. So, I've carefully considered whether the evidence suggests that Company D was most likely the "*legitimate supplier*" of a service and whether Mr A's payments meet the CRM Code definition of an APP scam.

The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason Mr A made the payments is a relevant consideration when determining whether the CRM Code applies in these circumstances or not.

For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Mr A was dishonestly deceived about the very purpose of the payments he made – i.e., that Company D criminally obtained Mr A's funds.

Mr A says that he understood Company D would use his funds to purchase gold, which he would own. That gold would be used to make jewellery, which could be sold at a profit. Mr A believed that his promised monthly return of around 2.5% would come from the profits made on selling the jewellery.

I've seen Company D's bank statements. Whilst I can't go into specific detail about what those statements show, I can confirm that the account activity appears consistent with what Mr A believed Company D was doing – i.e., it appears to have been regularly buying gold with investors' money. So, the receiving bank statements don't give me concern that Company D had a different intended purpose for the use of funds than Mr A.

Furthermore, Company D had a jewellery shop, which had been open for around two years before Mr A started investing, which Mr A had visited several times. So, it's plausible that Company D intended to use – and was using – Mr A's funds for the intended purpose of buying gold, making jewellery and selling it for a profit, which was being shared with investors – including Mr A.

Mr A was initially receiving a return from Company D. He told our Investigator that he received between £12,000 and £16,000 in cash. However, in January 2022, he told HSBC that he had received over £21,000 in returns from Company D following his initial investment in October 2021. Mr A also says he continued to receive returns from Company D until approximately June 2022.

Mr A has told us that prior to investing, he had spoken to other individuals who had invested with Company D and were happy with the regular returns they were receiving. Mr A was also aware that a large number of members of his local community were also investing with Company D.

It is concerning that after Mr A made his final investment of £23,500 in July 2023, Company D closed and the individual who was supposedly handling the investment on behalf of Company D (whom I'll refer to as 'B') ceased communicating with Mr A and disappeared.

I can certainly understand why Mr A thinks that's a strong indication that he has been scammed. I also think it's concerning that Mr A was receiving his returns in cash, which doesn't seem like good business practice for a legitimate company.

I'm also aware that the police are continuing to investigate those responsible for Company D. Mr A has shared an email from the police dated December 2024, which said Company D was being investigated under the Fraud Act 2006 and that it had obtained no evidence to contradict the "*fraudulent nature of the activities being investigated*".

However, the police have only been able to share very limited information about the investigation. They haven't shared who their suspects are, what crimes they are suspected of committing or provided any evidence to corroborate their email dated December 2024. Also, I'm mindful that the police haven't charged anyone involved and that some investors in Company D thought they were investing in gold mining, which differs from what Mr A thought he was investing in.

Mr A says that two of the directors of Company D met with him and advised that his money had been used to buy gold, but that this had been stolen by B. Mr A also said that he was played a voice note, which he says was B admitting to being responsible for money going missing. Afterwards, the directors of Company D told Mr A to report the situation to the police, which he did. It seems unlikely that a scammer would encourage a victim to go to the police.

I accept it's possible that Company D was operating a scam and that the returns Mr A (and other individuals were receiving) were not generated through the profits made on selling jewellery. However, whilst that is one possibility for what's happened, it's also possible that Company D failed for a different reason, such as an associate of the business stealing the company's money/assets which is the excuse Company D's directors have given. As a result, I'm not persuaded Mr A has demonstrated that he has been the victim of an APP scam as defined within the CRM Code.

As I can't say the CRM Code definition of an APP scam has been met, I can't fairly and reasonably conclude that the CRM Code applies in Mr A's circumstances and so I'm not satisfied that HSBC can be held responsible for refunding Mr A's loss. As a result, I can't say HSBC was wrong not to reimburse Mr A under the CRM Code.

Whilst Mr A feels very strongly that Company D has scammed him, I'm not satisfied that the CRM Code definition of an APP scam has been evidenced here. Should evidence become available later, which demonstrates an APP scam has taken place, then Mr A can ask HSBC to reconsider his claim.

My final decision

For the reasons given 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 Mr A to accept or reject my decision before 11 July 2025.

Liam Davies
Ombudsman