

The complaint

Mr F on behalf of F Ltd, is unhappy that HSBC Bank UK Plc decided not to refund it after Mr F says it was the victim of a scam.

What happened

F invested £15,947.50 into a buy-to-let property investment scheme with S. F's payment with S was to reserve a property. The reservation deposit of between 25 to 30% of the property price would then form part of the balance due on exchange of contracts with the developer. This reservation fee was non-refundable. Once the reservation form was completed and the fee paid, S then put investors in touch with solicitors to arrange contracts with the developer. Those contracts were drawn up between the investors and the developer.

Many other investors along with F found they couldn't take ownership of the property as mortgages couldn't be arranged and they couldn't afford to become cash buyers of the properties.

F, like many other investors raised a scam claim with her bank – being represented by a professional claims management company when doing so.

HSBC issued its final response which said it would not be upholding F's claim. It said based on the evidence it had seen, it said this was a dispute between Mr F and the seller. It recommended Mr F raise the dispute directly with S and may wish to contact a legal advisor or the citizens advice bureau.

F brought the complaint to our service. F is not the only complainant to have brought a complaint about the investment with S.

One of our investigators looked into things, he said it was possible the complaint wasn't within our jurisdiction to consider, as it was being brought by F, which is a Ltd company. But in any event he concluded HSBC's decision not to refund F was fair and reasonable in the circumstances.

The key points in his view were:

- There were a number of developments, introduced by S where work was started.
- And at least two developments were completed and a further two were in the final stage of work when S ceased trading.
- Our service is aware of an investor who was able to complete on two properties. Although the mortgage couldn't be arranged as S had promised the consumer here received what they paid for.
- Whilst there is an indication of misrepresentation this isn't sufficient to conclude this was an APP scam for the purposes of the CRM code.

F did not accept the investigators findings. In summary F said:

- The decision here impacted thousands of investors, who are part of an action group. Who have contacted their MPs and Trading Standards and the Police to provide support.
- The ombudsman service, is here to protect us (F and other consumers) and not hide behind technicalities.
- F said the criteria for an APP scam had been met:
 - o The purpose of the money – to reserve the property- was not met, the agreement was never fulfilled. F does not have knowledge of how the money was used after payment. The payment was made with the expectation that the consumer would receive a completed property which did not materialise.
 - o In terms of the intent and knowledge of the parties involved – F says it has reason to believe that the directors of S, along with the other parties involved, were fully aware of their role in the scheme. Their involvement makes the entire arrangement appear legal despite being fraudulent.
 - o Money paid by consumers was used to perpetrate the scam. The consumers were misled at every stage, reassured everything was on track but developers and brokers were intentionally delaying the process and this is a case of planned fraud.

The investigator considered these further points but said these didn't change the position that he'd seen no persuasive evidence that S's failings were the result of a scam. As the complaint couldn't be resolved it's been passed to me to consider 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.

I've come to the same conclusions as the investigator for the same reasons. I know that this will come as a disappointment to Mr F but I'll explain my reasons below.

I'll start by saying, I think this complaint is within in our jurisdiction to consider. F Ltd appears to meet the eligible complainant criteria of a micro-enterprise at the time of the events and when raising this claim and complaint.

I'm sorry that F has lost a significant sum of money as a result of this investment. And I appreciate Mr F's strength of feeling that someone should be held accountable for this. But this is a complaint against HSBC, not S or the other linked companies in this investment. And I can only assess HSBC's liability based within the law, rules and industry guidance and what I consider to be fair and reasonable.

Firstly, not all failed investments are as the result of an authorised push payment (APP) scam. And, in order for HSBC to be liable to refund F, then I need to be satisfied that F has been the victim of an APP scam, when applying the Contingent Reimbursement Model (CRM) Code and other relevant industry guidance in deciding the outcome of this complaint. That's not to take away that F hasn't suffered a loss or, that some fraudulent behaviour was underlying the S's actions.

It's important to note that I am not deciding a dispute between F and S – I don't have the power to look into a complaint about that company. My role is limited to deciding the dispute between F and HSBC based on the information I have access to, or has been provided by the parties to the complaint. I need to decide whether HSBC acted fairly, when concluding

that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that F has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

DS1(2)

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

(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.

DS2(2) This Code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;

In order for the consumer to have been the victim of APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. Firstly, in addressing F's complaint points, I'll repeat the investigators key findings below in italics below.

Our service is aware that work was started on a number of the developments S introduced investors to. In at least two cases, the developments were completed, and another two appear to have been in the final stage of work when S ceased trading. It would appear therefore that at the time payments were taken, the developments were real and were progressing towards completion.

Our service is also aware of one S investor that was able to complete on two properties. The investor has taken ownership of the properties and is currently renting them out. While S couldn't arrange a mortgage and the investor had to go through a specialist broker, they took ownership of the properties they paid a deposit for. This shows that at least in one case, an investor did receive broadly what they believed they were paying for. Additionally, it demonstrates there was a way for S clients to buy the properties, whether by paying cash or securing specialist mortgages. But the secured mortgage element of the contract was potentially misleading.

Investors have raised a number of issues, alleging that S exaggerated the value of the properties they were securing and providing misleading information about the accommodation being serviced. However, the properties were built and investors had the opportunity to purchase them, which leads me to conclude the underlying purpose of the contract was fulfilled and therefore this matter is a civil dispute rather than a scam.

Investors have also alleged that S misrepresented the ability of its partner firm, D, to secure mortgages. In communication with investors, D presented itself as an Appointed Representative (AR) of T. However, T has confirmed this wasn't the case as D did apply to be an AR, but was rejected. However, while S and D appear to have misrepresented D's

status, I'm not satisfied this is sufficient to conclude the investment was a scam. The purpose of the payment was to reserve a property. These properties were being developed at the time of payment and a number were completed.

Several allegations have been put forward without persuasive evidence to corroborate them. For instance, it's been alleged that S and the developer colluded to take deposits from investors in full knowledge they wouldn't be able to complete and purchase the properties they'd reserved. However, the developer says it wasn't aware when deposits were taken that many S investors would be unable to secure a mortgage and I've seen no evidence to dispute this version of events. I've also not seen sufficient evidence that S itself knew or should have known that many investors wouldn't qualify for a mortgage from the time of payment.

It's also been alleged the properties were built under minimum size requirements. However, no independent evidence has been provided to corroborate this. Additionally, the developer denies this is the case and says the completed apartments were in line with the size they were sold. Furthermore, even if this was the case, this wouldn't in and of itself change the finding that this is not an APP scam. I've also seen no evidence to suggest S could have been aware of this at the time payments were made.

I'm aware of an ongoing police investigation into S. However, it's possible this investigation will find this matter was a case of poor business practices or of a development project that failed due to unforeseen circumstances.

Based on the evidence currently available, I'm not persuaded that on balance I can say this matter meets the CRM definition of a scam. As a result, I'm unable to say HSBC has acted unfairly in declining this claim on the basis it is a civil dispute.

However, I do accept the possibility that F may have been the victim of a scam. Should additional evidence arise later, supporting the position that F has most likely been scammed, F can ask us to consider the matter again.

The findings above set out why there isn't enough persuasive evidence to conclude this was an APP scam. The properties were being built, there was an option to continue with the contracts, although I appreciate the mortgages weren't arranged as they ought to have been. And we know that some investors were able to complete their contracts. These all speak to the very purpose of the contract and agreement between S and investors. And they lead me to conclude, like the investigator, that at present, this does not meet the definition of an APP scam.

I'd like to acknowledge F's points following the view that:

- F says because the properties didn't materialise the purpose of securing the property through a deposit was not met. And whilst I agree the contract wasn't fulfilled there's no evidence this was as a result of fraud (for the reasons set out above).
- In terms of the intent and knowledge of the parties involved, as set out by investigator, there have been a number of accusations about the directors of S and other parties involved, but with no substantive evidence to support any of them. Without evidence to support these claims I cannot reasonably make a finding that their intentions were fraudulent, as appose to example, a poorly run business which failed for any number of reasons.
- F has no evidence to support its claim that the money from investors was not used as planned, or that the delays were fraudulent, rather than for another reason.

I do not disagree that there has likely been elements of misrepresentation here and even fraudulent misrepresentation. But given that developments were completed, and some investors got what they paid for, I'm not persuaded that S set out to defraud investors from the outset. That's not to say that evidence from a Police or another statutory body investigation, at a later stage, may reveal some new evidence on this point. But presently there isn't persuasive evidence to make that finding.

Our role here is to look at complaints impartially to decide what is fair in reasonable in all the circumstances of the complaint. Overall, there is not persuasive evidence that the investment with S and the various parties involved in the development of the properties set out to scam, F (and others) and so I'm satisfied that HSBC was correct in its application of the CRM code here and doesn't need to refund F's losses.

I've also considered if there was any other reason why HSBC would need to refund F and I haven't found any.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 17 April 2025.

Sophia Smith
Ombudsman