

The complaint

Mrs J complains that HSBC UK Bank Plc ('HSBC') didn't refund her money, that she believed was lost through an Authorised Push Payment ('APP') investment scam.

Mrs J has brought the complaint with the assistance of a professional representative. However, for ease of reading within this decision, I will refer to Mrs J in the main.

What happened

The background to this complaint is well known to all parties and has been laid out in detail by our Investigator in their view, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In 2019 Mrs J was looking to invest and was contacted by a company which I'll call 'E'. My understanding is that E claimed to be involved in the production of medicinal cannabis and was expecting high returns, due to the expected legalisation of cannabis in the UK.

The investment with E was part of the HMRC Enterprise Investment Scheme ('EIS') and so had associated tax benefits. Mrs J liaised with a 'business development manager' from E and was shown brochures and E's business development programs. Mrs J, happy with what she had seen and been told, and after carrying out some research into E and its director, decided to invest.

Mrs J made payments to E initially, and these were for ordinary shares in E – with Mrs J advising she received a share certificate each time. My understanding is that the shares would be listed on the London Stock Exchange within five years – and were expected to generate significant capital gain for E's shareholders.

Mrs J says she would meet an employee of E who provided support with her investment every few months, and this occurred over three years. Mrs J advised they would go through the EIS forms, which were subsequently sent to HMRC, and she received forms and acknowledgement correspondence back from HMRC.

Mrs J says she was subsequently told to invest in bonds and says she was provided with the details of an accountancy firm E was using, which I'll call 'R'. And so later payments were paid to R.

Below is a list of the payments Mrs J made from her HSBC account:

	Date	Beneficiary	Payment method	Amount
1	11 September 2019	E	Transfer	£2,500
2	23 September 2019	E	Transfer	£2,500
3	18 October 2019	E	Transfer	£2,500
4	24 March 2020	E	Transfer	£2,500
5	23 March 2022	E	Cheque	£15,000
6	18 May 2022	R	Transfer	£7,500
7	19 May 2022	R	Transfer	£7,500
8	10 June 2022	R	Transfer	£5,000
9	13 June 2022	R	Transfer	£5,000
10	13 June 2022	R	Transfer	£20,000
11	14 June 2022	R	Transfer	£25,000
12	15 June 2022	R	Transfer	£5,000
13	29 June 2022	R	Transfer	£50,000
			TOTAL	£150,000

* There was a transfer of £5,000 on 8 December 2020, which wasn't initially raised when Mrs J reported the matter to HSBC. Mrs J has confirmed she is happy to exclude this payment from the claimed loss.

A police investigation into a number of companies, which included E, began in March 2023. Mrs J therefore considered she had been the victim of a scam orchestrated by E and through her professional representative, subsequently reported the matter to HSBC in July 2024.

Mrs J considered the payments made weren't typical of her usual account activity and it ought to have indicated to HSBC that she was at risk of financial harm from fraud. She therefore considered HSBC ought to have intervened and had it done then this would have prevented her loss.

HSBC ultimately issued its final response on 8 October 2024. Within that it acknowledged that it was a signatory to the Lending Standards Board – Contingent Reimbursement Model ('CRM') Code but explained that, due to the ongoing Police investigation, it wouldn't be able to issue an outcome on Mr J's complaint until the investigations were concluded.

Unhappy with the response, Mrs J referred the matter to our service.

One of our Investigators looked into it. Having done so, our Investigator concluded it was fair for HSBC to rely on R3(1)(c) of the CRM Code to delay providing an outcome to Mrs J's claim due to the ongoing Police investigation. The Investigator also noted that for the payments made to R – no evidence or documentation was provided to support E had instructed her to make payments to R. And R wasn't included in the Police's investigation. The Investigator added that if any material evidence came to light which demonstrated that the companies Mrs J paid were operating a scam, and those payments met the CRM Code's definition of an APP scam, then she could ask HSBC to reconsider her claim.

Our Investigator also noted that not all of the payments Mrs J made would be covered by the CRM Code, as the CRM Code didn't apply to payments made by cheque and Mrs J had made a payment of £15,000 via cheque. So, our Investigator also thought about whether there was any other reason, outside of the CRM Code, why she might think HSBC might be responsible for reimbursing Mrs J, but she didn't think there was. In summary, this was because she didn't think HSBC would have identified any cause for concern about any of the payments Mrs J was making at that time as; Mrs J had received official documentation; she had ongoing contact over a number of years and had received updates; E was a registered company and there wasn't any negative information or reviews about E at the time.

Mrs J, through her professional representative, didn't agree with our Investigator's view. In summary, it acknowledged HSBC had cited R3(1)(c) of the CRM Code which allowed a firm to wait for the outcome of a statutory investigation before making its decision. But didn't consider the delay should exempt HSBC from its duty to conduct a proper review of the transactions and, in short, remained of the opinion that more could have been done to prevent the loss.

As agreement hasn't been reached the complaint has been passed to me 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.

First, for clarity, this decision focuses on the payments Mrs J made from her HSBC account. Mrs J also made payments from another banking provider, and that complaint is being looked at separately.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

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 – which is whether it is fair for HSBC to await the outcome of the Police investigation before providing its decision to Mrs J, and whether it reasonably could have prevented Mrs J's loss. 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.

It isn't in dispute that Mrs J authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an APP scam.

HSBC had signed up to the voluntary CRM Code, which was in force at the time Mrs J made her payments. The CRM Code provided additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

However, HSBC has effectively sought to rely on provision R3(1)(c) of the CRM Code that allows it to wait for the outcome of an investigation by a statutory body before making a decision. That provision states:

“If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm’s decision, the Firm may wait for the outcome of the investigation before making a decision”.

So, I will first consider if it is fair for HSBC to rely on this provision in the circumstances. It is also important to note at this point, that the CRM Code only applies to faster payments made directly to another person’s account. It therefore doesn’t apply to the payment Mrs J made by cheque. So, my consideration as to whether the provisions of the CRM Code have been applied correctly, relates only to the faster payments.

Ultimately, HSBC has one of three options available to it; it can either accept a scam has occurred and consider whether it should reimburse Mrs J under the CRM Code (for the faster payments), it can decide that no scam has occurred and therefore not reimburse Mrs J, or it can decide to await the outcome of an investigation.

As set out above, HSBC has decided to await the outcome of an investigation by the police, and the CRM Code has provisions that allows it to do so where the outcome of that investigation might reasonably inform its decision.

From what I have seen so far, I am not satisfied the evidence available to me indicates a scam has occurred in the circumstances. From the evidence Mrs J has sent in, which includes letters regarding the shares and bonds, the documentation appears to be professional. And I can see that Mrs J’s shareholding allocations were listed on E’s Companies House filings. I’m also mindful Mrs J has said she liaised with an employee of E every few months over three years going through the EIS forms. Mrs J has also said she received dividend payments which were paid by E.

I’m also aware that a number of customers did receive tax rebates from HMRC following their investments, as well as returns, which isn’t indicative of a company running a fraud. It is possible there have been some questionable sales tactics, but I’ve not seen sufficient evidence to persuade me that there was an intent to defraud, such that this was a scam rather than a high-risk investment.

Ultimately, what I’ve seen doesn’t indicate that the company Mrs J paid was orchestrating a scam investment in order to induce payments from investors with no intention to use the funds as intended.

I do appreciate there is an ongoing police investigation which includes E being investigated and I recognise that this may appear to be proof that Mrs J has been the victim of fraud – as it infers that the police have taken the matter seriously enough to pursue this course of action. However, the purpose of an investigation is to gather evidence. And that will likely go toward investigating what the intent was at the time; the result of which may or may not lead to a prosecution. But, in and of itself, an investigation doesn’t automatically mean that a fraud has occurred.

I am also mindful that the police update of May 2024 highlighted that it was ‘*an exceedingly complex investigation*’ and that “...over 100 banks accounts have been requested from banking institutions, resulting in around 50,000 transactions being forensically reviewed and analysed. The digital review of around 2 terabytes of information remains on going, with further lines of enquiry being identified from this data review.” When I take this into account, and consider the Police were already investigating at the time Mrs J reported the matter to HSBC, I don’t think it was unfair for HSBC to rely on the provision within the CRM Code to delay in giving its decision to Mrs J. The evidence isn’t sufficiently clear to indicate a scam had taken place – and there was a complex Police investigation already underway.

As I say, I’m mindful that there is the possibility that Mrs J has been the victim of fraud here. But from the information available to me, I cannot reasonably eliminate the possibility she has instead lost money to a failed investment. HSBC has indicated it would provide its outcome on conclusion of the Police investigation. It is possible that further evidence may become known at a later date, which may indicate that E were operating a scam. Should such evidence come to light, then Mrs J can complain to HSBC again, and refer the matter to this service, should she not be happy with the outcome.

Overall and in summary, because nothing I have seen on file clearly indicates to me that Mrs J has been the victim of an APP scam, and considering the ongoing Police investigation, I don’t think it’s unreasonable for HSBC to have said it will wait for the conclusion of that investigation – and the provisions of the CRM Code allow it to do so.

I note that while Mrs J made payments to E, she then went on to make payments for bonds in E. And Mrs J says she was instructed to make payments to R – which she says was an accountancy firm E was using. I don’t doubt that’s what’s happened, and I can see there is one piece of correspondence from E to Mrs J about the purchase of bonds (for £10,000) in November 2021 and that it had received her funds. And I can also see that Mrs J had made a £10,000 payment (from another banking provider) to R on the same date as that letter. So, it does appear that the payments Mrs J made to R were likely as a result of her investment dealings with E – and she paid the accountancy firm E was using.

Thinking of the cheque payment that was not covered by the CRM Code, I’ve also gone on to consider whether there is any other reason why HSBC would be considered liable for Mrs J’s loss on that payment or whether it could have prevented Mrs J’s loss overall – so considering all of the payments Mrs J made. I note Mrs J has made strong references that, outside of the CRM Code, HSBC ought to have intervened on the payments thereby preventing her loss.

HSBC may have needed to intervene in the payments if they reasonably had concerns Mrs J may have been at risk of financial harm. There were some large payments – so it is reasonable to say intervention might have been appropriate in the circumstances. Where there possibly wasn’t any intervention and there should have been, or there isn’t any evidence available as to what that intervention looked like, I have to make an on balance finding as to what I consider is most likely to have happened or what is more likely than not to be the case.

Having done so, I’m not satisfied I can fairly conclude that any conversations had would have led to Mrs J not going ahead with the payments and stopping all future payments to E, or R. As I have explained above, the information I have seen so far does not clearly indicate Mrs J has been the victim of a scam. There is debate to this day as to E’s intentions. So, I think it’s highly unlikely anything conclusive would’ve been available at the material time. I’m persuaded E would have appeared to have been a genuine business and so investing in it would not have necessarily raised any red flags for HSBC.

And the same logic of thinking applies regarding the payments made to E that Mrs J says occurred through her paying R as instructed. And I'm also mindful that by the time Mrs J was making payments to R – she had been liaising with E for around two and a half years and had made previous payments to it. So, I can't fairly say any intervention would have made a difference here and prevented Mrs J from going ahead with the payments.

I'm sorry to hear of what's happened to Mrs J and I have a great deal of sympathy for her. She has lost a significant amount of money, and I don't doubt she has been badly let down by the company she invested in. But my role here is to consider HSBC's actions. And based on the evidence available, I don't think HSBC has acted unreasonably in relying on the provision of the CRM Code that it has, given the Police investigation that was already being undertaken at the time Mrs J raised the matter with it. Once the Police investigation has concluded, and if there is information available from that investigation that supports Mrs J being the victim of a scam orchestrated by E, then she should liaise with HSBC regarding her claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 21 November 2025.

Matthew Horner
Ombudsman