DRN-5397292

## The complaint

Mrs E complains that HSBC UK Bank Plc ("HSBC") didn't refund her the money she lost, to what she believed to be an Authorised Push Payment ("APP") investment scam.

In bringing her complaint to this service Mrs E is represented, but for ease of reading I will refer to Mrs E throughout this decision.

## What happened

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

In or around December 2018, Mrs E was approached about an investment opportunity, which involved investing in loan notes to raise money for various projects, with a company I'll refer to as 'H'. Believing everything to be genuine, on 4 December 2018 Mrs E made a payment for £10,000 to H, with a further payment of £10,000 being made on 9 October 2019.

H went into administration in 2022, and Mrs E wasn't able to withdraw or recover any of the money she invested, she now believes H were operating a scam.

Mrs E complained to HSBC in September 2024, but it didn't uphold her complaint. In summary, HSBC said that there had been no error in processing the payments and it didn't consider the payments had been made as part of a scam.

Unhappy with HSBC's response, Mrs E brought her complaint to this service. One of our Investigators looked into things, but didn't think the complaint should be upheld. In summary, he said he hadn't seen sufficient evidence to say that this was a scam. Our Investigator also thought that even if HSBC had intervened, and questioned Mrs E about the payments, it wouldn't have made a difference and given HSBC any concerns.

Mrs E didn't agree with our Investigator's view. In summary she maintained that her complaint should be upheld and what had happened was a scam.

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.

Mrs E has made some detailed submissions in support of her complaint. I've read and considered everything she has 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.

I've decided to not uphold this complaint for materially the same reasons as our Investigator.

HSBC was a signatory to the Contingent Reimbursement Model ("CRM Code"). This is a scheme through which victims of scams could (in certain circumstances) receive reimbursement from the banks involved. The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It isn't applicable to the first payment Mrs E made, as the CRM Code wasn't in place at the time this payment was made. So, it can't be used as a basis to expect more from HSBC for the first payment.

The CRM Code also only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mrs E transferred funds to another person for what they believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mrs E has been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to the second payment either and so HSBC isn't required to reimburse her under it. Our Investigator covered in detail why they considered the payment purpose Mrs E had in mind, matched the purpose the recipient had in mind for the payment. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mrs E's purpose for making the payment was to invest in H and for the funds to be used towards loan notes to fund property development. And that she was persuaded at the time this was a legitimate venture. I accept that H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mrs E's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Mrs E when it took her funds.

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. I'm aware H hasn't filed accounts since 2019, and it went into administration in 2022. 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.

Mrs E'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 receiving funds for use in developments it had no intention of completing. Ultimately, the information we currently hold suggests that H was a failed investment venture, not a scam.

All things considered, in the circumstances of this case, I can't agree HSBC was wrong to consider Mrs E's situation a civil matter or is wrong not to have reimbursed her under the CRM code at this time.

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 Mrs E. 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, on either of the payments made, would've uncovered any meaningful negative information, such that Mrs E wouldn't have continued with her payment. I say that as, at the point the payment was 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 Mrs E might be falling victim to a scam.

Alongside this, 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 Mrs E going ahead with the investment when she would've had access to this kind of information and, additionally, her belief in the legitimacy of H.

HSBC couldn't have known what was going to happen to the company and how that might impact Mrs E, and, in any event, 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 Mrs E 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 (December 2018/October 2019 until September 2024) between the payments being made and Mrs E 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 Mrs E 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 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.

If new material evidence comes to light at a later date to show H was operating a scam, then Mrs E would be able to ask HSBC to reconsider this matter (and may ultimately be able to refer the issue back to us if she is unhappy with HSBC's response).

## 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 E to accept or reject my decision before 5 August 2025.

Stephen Wise
**Ombudsman**