

The complaint

Mrs M complains that HSBC UK Bank Plc ('HSBC') has not reimbursed her after she says she fell victim to a property development scam.

What happened

In September 2022, Mrs M invested £50,000 in a company I will call 'D' who said it was investing in property development. She sent three payments over three days from her HSBC account. Mrs M was introduced to D by a friend she had known for over 40 years. The friend had been investing with them for a couple of years and reported that she was pleased with her returns. She was also introduced to the director of D before investing. Mrs M believed that D was a property development scheme, and the investment capital would be used to purchase, refurbish and sell or let properties to generate a profit. She believed she would receive a full return of her investment capital at the end of a fixed term along with a guaranteed rate of interest, which was to be paid monthly.

Mrs M never received any returns on her investment. In early 2023 Mrs M said her friend who had introduced her to the investment said that D had gone into administration in June 2022. Mrs M contacted the director of D who said that another of his companies was having issues, but that it had no relevance to D and her funds were currently being used in developments. Whilst he told her that this would not impact her investment, in March 2023 Mrs M decided to request to withdraw her funds early. The director of D said he would speak to his partner. Mrs M never heard from him again.

In mid-2022, an individual who had invested with D did not receive their investment capital back, despite obtaining a statutory demand. This resulted in the appointment of an administrator in June 2022.

Mrs M said she realised she may have been scammed, and so got in touch with HSBC and asked them to reimburse her funds. HSBC said this was a private civil dispute between her and D. It said ponzi schemes or private civil disputes were not covered under the Contingent Reimbursement Model code ('CRM code'). It said D were in administration so she should contact the administrators if she had not already done so. It also said that it had spoken to her twice about payments and found that no errors were made in the calls. So, it declined to refund Mrs M.

Mrs M was not satisfied with their response, so she escalated her concerns to our service. One of our investigators looked into what had happened and recommended that Mrs M's complaint should be upheld. They recommended that she should be refunded in full, along with 8% simple interest payable from the date HSBC declined her claim under the CRM Code until the date of settlement. Mrs M accepted this assessment, but HSBC maintained that this amounted to a private civil dispute and so they were not liable to refund Mrs M's losses. It said that D did not intend to scam Mrs M. It also said that it had not been determined beyond reasonable doubt that the funds Mrs M sent were used for purposes other than what was originally intended. It explained that it disagreed with our service's decision to progress such cases which are complex and involved complex movement of funds. It suggested that it was not reasonable for us to pursue outcomes to complaints until

such a time that there are criminal charges or convictions. It said that based on the information it had seen so far, it appears that D was a genuine business that had fallen on bad times and since faced insolvency, rather than a scam.

As no agreement could be reached, the case 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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. HSBC was a signatory to the code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

“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”*

The CRM Code is also clear at DS2(2)(b) that it does not apply to *“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”*

If I conclude that the payment here meets the required definition of a scam then Mrs M would be entitled to reimbursement, unless HSBC has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Mrs M's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than

not that she was the victim of a scam rather than this being a failed or bad investment.

Has Mrs M been the victim of a scam, as defined in the CRM Code?

The Code does not 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, it would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i)) is met in this case. This isn't in dispute. But what is in dispute is whether Mrs M's payments meet DS1(2)(a)(ii). So I've gone on to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and D had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I have seen and what Mrs M has told us I am satisfied that she made the payments with the intention of investing in property development. I have not seen anything to suggest that she did not think this was a legitimate venture – and as HSBC argues this is a civil matter, it too seems to accept this.

I've then considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so this was a scam or a genuine investment.

The evidence I hold suggests that when D first started, it was involved in property development, although it is not clear if all funds received were used for this purpose. But by the time Mrs M became involved with it in 2022, it was no longer operating in this same way.

From 2019, D's behaviour changed significantly. The beneficiary bank statements do not indicate that D was continuing to purchase many properties after April 2019. The funds coming into the account significantly increased around this time. Large sums were regularly being withdrawn for the benefit of D's directors and other funds were used to pay returns to existing investors. By 2021, D had also links to another company which our Service considers was most likely running a Ponzi forex investment scheme. D's investors funds were being diverted to the accounts with this company, despite it purporting to offer a very different and much higher risk investment than what they had agreed to with D. Further to this, by the time Mrs M invested, administrators had been appointed due to D not repaying an investor despite the existence of a statutory order to do so.

Our service is also aware that D's directors and this other company's directors formed a new company together at the same time as D's behaviour changed in 2019. So this strongly indicates that D was not just choosing to invest some of its investor's funds in a different investment – which would still have issues as explained above. But instead indicates that D and this other company were working together at this time. And as we consider it most likely this other company was operating a scam, this indicates D was too by the time Mrs M invested.

Whilst Mrs M did not receive any returns, I am aware that some investor's received returns. But as above, I am aware that some investor's funds were used to pay returns. And it seems to be the case that any returns investors received were likely sent to encourage further investment, either from existing or new investors who were recommended the opportunity from others who had already invested.

From 2019, it does not appear that D used the investor funds for the purpose which they

were intended, and so this demonstrates that they were not the legitimate supplier of a service at the time Mrs M made her payments. D's conduct went beyond simply misleading investors about a genuine investment opportunity and that the real purpose of the payments received was different to what investors were led to believe – and this was through deception on the part of D.

I am satisfied therefore that D was most likely operating a sophisticated scam. I consider it most likely D's purpose for the funds was different to what Mrs M understood and intended. And that this was because D intended to dishonestly deceive her and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is Mrs M entitled to a refund under the CRM Code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs M. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

HSBC hasn't argued that it provided an effective warning in this case. Nor has it argued that Mrs M did not have a reasonable basis for believing she was paying into a legitimate investment. And so, I do not think it would be fair for them to rely on any exceptions under the code here.

On Mrs M's reasonable basis for belief – given that HSBC are still arguing that D was a genuine business who fell on hard times, it would be hard to argue that Mrs H did not have a reasonable basis for believing that she was investing in a legitimate company.

It is arguable in this case that HSBC couldn't have provided a warning that was effective *and* would have prevented Mrs M with going ahead in the circumstances of this particular scam. But this doesn't change HSBC's overall position here, as whether any reimbursement is due is then dependent on if any other exceptions apply.

With this in mind, I do not think that HSBC have established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. I am satisfied therefore, that HSBC should refund Mrs M in full under the provisions of the CRM Code.

Putting things right

In order to put things right, I direct HSBC to:

- Refund Mrs M her £50,000 lost to the scam;
- Pay 8% simple interest per annum on this amount from the date her claim was declined under the CRM Code to the date of settlement.

As D is going through insolvency proceedings, it is possible Mrs M could recover some further funds in the future. In order to avoid the risk of double recovery, HSBC is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

My final decision

My final decision is that I uphold this complaint, and I require HSBC UK Bank Plc to put things right for Mrs M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 24 October 2025.

Katherine Jones
Ombudsman