

Complaint

Mr E complains on behalf of E, a limited company, that HSBC UK Bank Plc didn't reimburse it after it reported falling victim to an investment scam. Although it was the limited company that sustained the loss here, it was Mr E who interacted with the alleged scammer. For that reason, I have at times referred to Mr E in the text that follows.

Background

In mid-2024, Mr E became aware of an investment opportunity with a company known as Company C. Company C claimed to offer investments in specific properties on the understanding that they'd be refurbished and then used to provide social housing in different areas of the country. It said it had a range of contracts with local authorities to facilitate it being paid for making its properties available for social housing. This was how investors would earn a return on their money.

Mr E was told he could expect to earn a 20% return on his investment over a period of three-years. He was also encouraged by the fact that he knew of at least two other people in his immediate professional circle who had invested with Company C and were apparently earning returns. He conducted some basic checks on the company and was happy to proceed. In August 2024, he used his HSBC account to make two payments to a total value of £54,000.

He was expecting to receive his first return payment around two months later, but that didn't happen. He determined that he must have fallen victim to a scam. He notified HSBC, but it didn't agree to reimburse him.

Mr E wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. HSBC disagreed with the Investigator's opinion. It sought to rely on a specific provision in the relevant rules that allow it to delay deciding on an individual fraud claim if it is subject to an investigation by a statutory body, such as the police. It said that for us to determine the complaint now was premature.

Since HSBC disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As a starting point, the legal position is that a firm is generally required to process payments and withdrawals authorised by its customer, in line with the Payment Services Regulations (in this case, the 2017 regulations) and the account terms and conditions. It is accepted that the disputed payments were authorised, so E is presumed liable at first instance.

At the time, HSBC was a signatory to the Contingent Reimbursement Model Code (the CRM Code), overseen by the Lending Standards Board. Under certain circumstances, the CRM Code required firms to reimburse customers who had fallen victim to authorised push payment (APP) scams. However, for E to benefit from the protection offered by the CRM Code, the payments must fit its definition of an APP scam. Its definition is:

“a transfer of funds across Faster Payments where ... (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

In other words, to conclude that E was the victim of a scam, it must be shown that the purpose for which it made the payments differed from the purpose for which Company C received them, and that this difference arose because of dishonesty or deception on the part of the recipient. The key question, therefore, is what the seller intended at the time the payments were made. While I can't know their intentions directly, I must examine the available evidence and determine what those intentions were likely to have been.

HSBC says that, until the investigation being conducted by the police is concluded, it's premature for this service to make a finding that E was the victim of an APP scam. It says it's exercising its discretion to not give an answer on whether this is an APP scam in reliance on one of the provisions in the CRM Code – R3(1)(C).

I've considered its argument carefully, including its comments that police enquiries appear complex, that our Service doesn't have the full facts, and that it's potentially unsafe to reach conclusions on the balance of probabilities. However, while there's an ongoing police investigation into Company C, the specific details haven't been shared with our Service. It's unclear if any outcome of that investigation will have a significant bearing on the issues relevant to this case.

Any criminal proceedings that may take place in connection with Company C will be based on the criminal burden of proof, i.e. beyond all reasonable doubt, whereas our Service makes decisions on the balance of probabilities. Guidance provided by the Lending Standard's Board has indicated that it's not necessary for the strength of the evidence supporting a customer's claim to meet the criminal threshold. I therefore need only be persuaded on the balance of probabilities that E is the victim of an APP scam.

I'm also not persuaded it'd be appropriate to delay giving an outcome on the basis that, as HSBC suggests, there's a significant risk it may prejudice criminal proceedings. As I've said, the specific details of any police investigation haven't been shared with us. I don't consider the risk of reimbursed victims choosing not to testify to be significant or supported by evidence, such that it's necessary to delay giving E an outcome on this case.

This Service was set up to resolve complaints quickly and with minimum formality. I don't know how long the police investigation will take. It could be months or years. I don't think it'd be appropriate to delay reaching an outcome, for an undefined period of time, unless doing so is likely to significantly help me in deciding this issue.

What I need to decide here is whether, on balance, E was scammed by Company C. In looking at the information we already know about Company C and E's dealings with it, I'm not persuaded that the outcome of the police investigation is likely to have a significant bearing on this decision. I'm satisfied there's already enough to show the payment in question meets the CRM Code's definition of an APP scam set out above.

I'm satisfied E intended to pay Company C for what Mr E believed was a legitimate purpose (a property investment). So, I've gone on to consider whether Company C's intended purpose was broadly aligned with E's at the time of the payment and, if not, whether this was the result of dishonest deception by Company C. Having done so, for all the reasons below, I'm persuaded Company C fraudulently deceived E into making this payment at the time it was made:

- Company C held accounts which show around £6,000,000 being spent in a way that appears consistent with property development. But it also received around £20,200,000 from investors. Given Company C's standard unit price of £13,500, that means it would need to have entered around 1,500 property agreements. But the outgoing payments aren't consistent with Company C paying for rent, refurbishments

and furnishings for this many agreements.

- Company C claimed to hold contracts with local authorities, but their account statements show no incoming payments from local authorities or housing providers.
- Additionally, several local authorities have confirmed they didn't have a working relationship with Company C. One confirmed an invoice Company C used to supposedly demonstrate a working relationship was, in fact, a forgery.
- Our service has seen evidence that at least six different units were sold to multiple investors. In some cases, addresses associated with individual agreements were in buildings where the owners confirmed they had no relationship with Company C.
- We've also seen instances where the properties remained derelict after the investment was made or remained under construction when they were supposedly generating an income.
- Company C's accounts seem to show that around a third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing. Instead, funds were used for other purposes ranging from cash withdrawals, payments to individuals involved in operating the company, paying jewelers, restaurants and more. There are further substantial withdrawals and payments for which the purpose is unknown.
- Around £440,000 Company C received could be legitimate income, although none of this came from local authorities or social housing providers. But in comparison, £2,500,000 was paid to investors. It's clear this didn't come from genuine income, which strongly indicates Company C was operating a Ponzi scheme.

Overall, there's little to suggest any transactions are consistent with Company C completing property development for the benefit of investors, and much more to suggest it wasn't using investor funds for the intended purpose. Even if any of the funds it received were used for property development, it seems likely this was done with the intention of encouraging further investment as part of an overall scam.

For all the above reasons, I'm persuaded that the payments E made to Company C meet the CRM Code's definition of an APP scam and it's unlikely the outcome of the police investigation will impact that. For those reasons, I'm satisfied that this case can be considered under the CRM Code.

Should E be reimbursed under the CRM Code?

The starting position under the Code is that E should be reimbursed unless HSBC can demonstrate that an exception applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that E:

- Ignored an Effective Warning by failing to take appropriate actions in response to such an Effective Warning; and/or
- Made the payment without a reasonable basis for believing that the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

So far as I can see, HSBC didn't provide a warning in connection with either of the payments E made, so it can't rely on the first exception. As for the second exception, I think Mr E did make this payment with a reasonable basis for believing it was in connection with a legitimate investment. The communications he had with Company C gave the impression of a genuine and professional organisation. The explanation it had given to him and other potential investors of the mechanism it would use to generate an income was a

comprehensible, practical one and would've appeared a plausible way for a company to generate an income.

The returns it was offering were more generous than those on offer to retail investors more generally. However, they weren't so outlandish that Mr E ought to have considered the possibility that they were too good to be true. It's also significant that he knew of other people who had invested with Company C and appeared to be earning the returns that they'd been promised, which would only have supported his conviction that he was dealing with a genuine company.

Overall, I think Mr E made these payments with a reasonable basis for believing he was entering into a genuine investment and so I'm not persuaded that this exception applies either. As HSBC hasn't demonstrated that an exception to reimbursement applies, it follows that it should now reimburse E under the CRM Code.

Final decision

For the reasons I've explained above, I uphold this complaint. If E accepts my final decision, HSBC UK Bank Plc needs to:

- Refund the payments made in connection with the scam, less any returns that were received (if any).
- Add 8% simple interest per annum calculated to run from 15 days after E notified HSBC of its claim until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 27 March 2026.

James Kimmitt
Ombudsman