

The complaint

Mr W complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost as a result of what he believes was an 'Authorised Push Payment' ('APP') property investment scam.

Mr W brings his complaint with the assistance of a professional representative. For ease of reading within this final decision, I will refer solely to Mr W in the main.

What happened

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

Mr W says that he was persuaded to invest with a company that I'll refer to as 'Company H' in my decision. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr W says that the sale and rent of Company H's assets would later generate company income which would be used to pay investors income and capital.

Between September 2018 and August 2020, Mr W made five faster payments to Company H totalling £70,000.

Company H has gone into administration. Mr W believes the investment wasn't genuine and that he is the victim of a scam. He complained to HSBC advising it failed in its duty of care and it should reimburse him under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code').

Mr W received a response from HSBC that advised it had been unable to act on the paperwork provided by his representative. As a result, HSBC didn't uphold Mr W's complaint. Its letter provided referral rights to this service, so Mr W brought his complaint to this service. Through his representative, he provided detailed evidence that he considered supported his contention that he was the victim of a scam by Company H.

HSBC, in its submissions to this service, declined reimbursing Mr W, advising it was a private civil dispute as Company H was a genuine company that went into liquidation.

Our Investigator who considered this complaint didn't recommend that it be upheld. He said there was insufficient evidence to conclude that Company H didn't intend to provide the agreed investment or make the returns it set out – meaning he didn't consider there was sufficient evidence to conclude that the definition of an APP scam had been met. So he didn't consider he could fairly and reasonably ask HSBC to reimburse Mr W under the provisions of the CRM Code for the final four payments he had made to Company H. The Investigator also set out that the first payment Mr W made was before the CRM Code came into effect. And the Investigator concluded that for that payment (and the four other payments) HSBC wouldn't have been able to prevent Mr W's loss at the time the payments were made – as any intervention wouldn't have revealed that anything was untoward at the time.

Mr W disagrees and maintains that his complaint should be upheld under the CRM Code. He also says that HSBC failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principle 6. And he has explained why he thinks Company H was operating a scam and a Ponzi scheme.

In particular, Mr W has referred to high commissions paid to introducers and to high interest rates. And he says Administrators for Company H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on.

As Mr W didn't accept the Investigator's opinion, 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, Mr W made some other payments – and these didn't go to Company H. They went to other companies not affiliated with Company H. Our Investigator confirmed that these appear to have gone to an international money transfer service and also to a peer-to-peer lending and property crowdfunding platform. So, the Investigator didn't think the payments formed part of Mr W's complaint about Company H. Mr W, nor his representative, have provided any further information or testimony about those payments. In the absence of any further information about these payments – I can only presume Mr W, and his representative, accept that they don't form part of Mr W's complaint about Company H. So for clarity, this final decision focuses solely on the payments Mr W made from his HSBC account to Company H and that he now believes was as a result of a scam.

In deciding what's fair and reasonable, I'm 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 time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as HSBC shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM Code, which HSBC had signed up to. In this case, the final four payments Mr W made toward the investment with Company H were after the CRM Code came into force. As his representative argues he was scammed by Company H, I've considered whether the CRM Code applies and if he is due any reimbursement as a result.

The CRM Code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mr W transferred funds to another person for what he believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mr W has been the victim of a scam in line with this required definition. This means the CRM Code doesn't apply to his payments and so HSBC isn't required to reimburse him under it.

Our Investigator covered in detail why they considered the payment purpose Mr W had in mind, and the purpose in which the recipient had, matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mr W's purpose for making the payments was to invest in Company H and for the funds to be used towards property development. And that he was persuaded at the time, through the paperwork, this was a legitimate venture. I accept that Company 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 Mr W's funds in a different way to what was agreed. I haven't seen persuasive evidence that Company H's intention was to defraud Mr W when it took his funds.

Mr W's representative has provided a significant amount of additional paperwork from several sources that it says evidence Company H was operating a scam. But as our service has explained to it on a number of cases already, while the information provided does indicate there may have been some poor business practices and/or financial management in some areas of Company H, this isn't enough to say it was operating a scam. We haven't seen evidence that Mr W's funds weren't used for the intended purpose or that Company H took them with fraudulent intent.

Ultimately, the information we currently hold suggests that Company H was a failed investment venture, not a scam. The information provided doesn't evidence Company H had fraudulent intent when it took Mr W's funds, as required under the definitions within the CRM Code. So I can't agree HSBC was wrong to consider Mr W's situation a civil matter.

This also means I'm unable to ask HSBC to reimburse Mr W on the basis that he was vulnerable at the time the payments were made, as his representative has alleged. When the CRM Code applies, a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM Code doesn't apply, I won't be asking HSBC to reimburse Mr W.

If material new evidence comes to light at a later date, Mr W can ask HSBC to reconsider his fraud claim for the final four payments that were made after the CRM Code's implementation.

I've gone on to think about whether HSBC should be held responsible for Mr W's loss for any other reason – including the first payment he made which was before the CRM Code came into force.

As explained earlier, HSBC is expected to process payments and withdrawals that its customer authorises it to make, but HSBC should have also been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

With the payments Mr W made, I'm not persuaded that HSBC would have had any concerns about the payments. Company H was a legitimate company operating at the time the payments were made and was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest HSBC should have been concerned that Mr W might be falling victim to a scam. Many of the points / concerns about some aspects of Company H that have been raised, have come to light after detailed analysis years after Mr W made the payments.

I'm really sorry to disappoint Mr W, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund him under the provisions of the CRM Code (for the final four payments), based on the evidence that is currently available. And I'm not satisfied HSBC would have been on notice that Mr W was potentially at risk of financial harm from fraud at the time he made *all* the payments – so therefore it couldn't have prevented his loss either. Overall, I don't consider his loss is the result of any failings by HSBC.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 August 2025.

Matthew Horner
Ombudsman