

The complaint

Ms N complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In 2024, Ms N found out about opportunities to invest in two companies through the director of a consultancy company. After looking into the companies, she was interested in investing and so made a number of payments from her HSBC account to the consultancy company, on the understanding that her funds would then be passed on to the companies she wanted to invest in.

I've set out the payments Ms N made from her account below:

Date	Details	Amount
9 May 2024	For investment in 1 st company	£25,000
10 May 2024	For investment in 1 st company	£25,000
11 May 2024	For investment in 1 st company	£1,034
4 September 2024	For investment in 2 nd company	£20,000
20 September 2024	For investment in 2 nd company	£10,000
16 October 2024	For investment in 2 nd company	£10,000

Unfortunately, Ms N was never issued with the investment certificate she was told she would be for the investment in the first company. And when investigating this, she discovered the funds she sent for her investment in the second company had never been sent on to it. Ms N then reported the payments she had made to the consultancy company as a scam and asked HSBC to refund the money she had lost.

HSBC investigated but said it felt the consultancy company was a genuine company and so this was a civil dispute between it and Ms N, rather than a scam. And so it didn't agree to refund the payments Ms N had made. Ms N wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was enough evidence to say the payments intended for an investment in the first company were made as a result of a scam, but felt the payments for the second company were made as a result of a scam. So they recommended HSBC refund the payments intended for an investment in the second company. HSBC disagreed with our investigator, so the complaint has been passed to me.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises it to make. However, where the customer made

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

Is it appropriate to determine this complaint now?

HSBC has argued that the payments Ms N made are the subject of an ongoing police investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse her. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before a firm has made its decision under the code – it can't seek to delay a decision it's already made. And HSBC only raised this after it had already reached a decision on Ms N's claim in its final response letter to her of 29 November 2024, when it said it felt this was a civil dispute. So I don't think HSBC can now rely on this provision here.

I've also considered whether it would be appropriate to delay my decision in the interests of fairness, as there is still an ongoing police investigation into the consultancy company and its director.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Ms N's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Ms N was the victim of a scam rather than a civil dispute. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Ms N first raised her claim with HSBC in late 2024, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Ms N an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

So, for reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of any connected police investigation for me fairly to reach a decision on whether HSBC should reimburse Ms N. I'm satisfied there is already sufficient evidence for me to reach conclusions on whether she has been the victim of scams here. So it is appropriate for me to consider this complaint.

The payments intended for an investment in the first company

At the time Ms N made the three payments intended for an investment in the first company, HSBC was a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This required firms to reimburse customers who had been the victim of certain types of scams, in all but a limited number of circumstances. But customers were only covered by the code where they had been the victim of a scam – as defined in the code.

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't 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 in order to determine whether Ms N has been the victim of a scam as defined in the CRM code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and the consultancy company she sent the money to intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the consultancy company.

From what I've seen, I'm satisfied Ms N made the payments here with the intention of investing in the first company. And I haven't seen anything to suggest she didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the consultancy company intended a different purpose for the payments, or that Ms N's and the consultancy company's purposes for the payments weren't broadly aligned.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is more likely to have happened, based on the evidence I do have.

The director of the consultancy company is also the director of the company Ms N intended to invest in here. So I think it's likely the intentions of both companies were the same in relation to the payments Ms N made here.

I appreciate Ms N says she hasn't received the shares her investment in this company was intended to purchase. But companies can fail to carry out activities they have agreed to for a number of reasons, that don't necessarily mean they never intended to carry them out or are operating a scam. So I don't think this is enough to say either the company Ms N intended to invest in or the consultancy company were operating a scam.

The communication Ms N received from the consultancy company about the payments she was making described the account the payments were being made to as an escrow account. And we now know that it was not an escrow account, but a standard business account in the name of the consultancy company. But while this suggests the consultancy company wasn't being honest about the way Ms N's funds would be held, I don't think it necessarily suggests her funds wouldn't be used for the purpose she intended them to be.

Ms N has also provided evidence that, in paperwork relating to the investment, the consultancy company was using the name and details of a law firm that has since said it is not connected to the project. But while this again suggests dishonesty on the part of the

consultancy company, I still don't think this necessarily suggests it didn't intend to use her funds for the purpose she intended them to be used.

Ms N has also provided evidence that, at one stage, the accountant for the investment was unaware of what paperwork needed to be completed for her to be provided with the certificate she was told she would receive. And she's said some funds from investors weren't passed on to the team working on the project and many of this team have now resigned as a result of not being paid. But while these issues suggest the project she intended to invest in was being managed poorly and wasn't being run as I might expect a professional project to be run, poor management and unprofessional behaviour are not the same as intending to operate a scam.

I recognise that some of the issues Ms N has raised in relation to this first company she intended to invest in could suggest it was being operated as a scam. But I also can't rule out the possibility that outside factors or poor management meant that, while the company intended to progress the project she thought she was investing in, this ultimately didn't happen. I don't think the evidence I have available clearly shows that either the consulting company or the company she was investing in didn't intend to use her funds for the purpose of progressing the project the company was working on, or for the overall goals and aims of the company.

And so I'm not satisfied that Ms N's claim for these payments meets the CRM code's definition of a scam, or that HSBC has acted unreasonably in not agreeing to refund the payments she made for the investment in this first company.

The payments intended for an investment in the second company

The first two payments Ms N made for an investment in the second company were also made while HSBC was a signatory of the CRM code. So I've considered whether the circumstances of these payments meet the definition of a scam, and then whether Ms N is entitled to a refund for them under the CRM code.

Has Ms N been the victim of a scam, as defined in the CRM code?

In line with the definition of a scam from the CRM code I set out above, I've considered whether the purpose Ms N intended for these payments was legitimate, whether the purposes she and the consultancy company she sent the money to intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the consultancy company.

From what I've seen, I'm satisfied Ms N made the payments here with the intention of investing in the second company. And I haven't seen anything to suggest she didn't think this was legitimate. But while this second company she intended to invest in appears to be a legitimate company that was seeking investment at the time, I think the evidence I've seen suggests the consultancy company didn't intend to act in line with the purpose for these payments it had agreed with Ms N.

We've been sent evidence by this second company Ms N intended to invest in about its relationship with the director of the consultancy company. This says the company initially engaged the director as finance officer on a temporary basis. But the director then used meetings with clients of this second company to further his own personal business interests, and repeatedly disregarded instructions not to propose the use of the consultancy company's account for the deposit of investor funds. The second company also had a number of concerns about the director consistently misrepresenting investor interest, claiming investor commitments that did not materialise and falsifying official documents.

So while the director of the consultancy company was legitimately connected to this second company, there appear to be significant concerns about his conduct and allegations of dishonesty in relation to work he was doing for the company and around the same time. And I can't see any reason for the director to ask investors to transfer their funds to the consultancy company rather than directly to the second company, as he did for Ms N's payments and particularly after being instructed not to by the company, other than because he intended to use the funds for purposes other than an investment with the second company.

I've also seen evidence relating to the account the payments Ms N made were sent to. And this shows the funds she sent were immediately transferred to a number of other accounts. But the second company Ms N intended to invest in has confirmed it never received her funds. And I also can't see any reason for the consultancy company to immediately transfer Ms N's funds away to accounts that didn't belong to the second investment company, other than because it didn't intend for the funds to be sent to the company.

After Ms N discovered that her funds hadn't been sent to the second company she intended to invest in, the director of the consultancy company told her they couldn't return the funds to her until she got written confirmation from the second company that it hadn't issued her the shares her funds were intended to purchase. But even after Ms N got this written confirmation from the second company, the consultancy company didn't return her funds. And I think this suggests the consultancy company didn't intend to return her funds.

So I think the evidence shows the consultancy company didn't intend to pass Ms N's funds on to the second company, as she intended and understood they would be. And so the purpose the consultancy company intended for the payments Ms N made wasn't aligned with the purpose Ms N intended for the payments. And I think the discrepancy in the alignment of the payment purposes between Ms N and the company was the result of dishonest deception on the part of the consultancy company.

And so I think the circumstances here meet the definition of a scam from the CRM code.

Is Ms N entitled to a refund under the CRM code?

As I explained above, HSBC is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Ms N fell victim to in relation to these payments for an investment in the second company, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

As I mentioned above, this second company Ms N intended to invest in appears to be a legitimate company that was seeking investment at the time. She says she found out about the company at a corporate event she attended and had met the CEO of the company. The

documents she was provided about the investment all look professional. And the director of the consultancy company was legitimately connected to the company at the time. So I don't think there was anything about this investment that should have caused Ms N significant concern, or that HSBC has established that she made these payments without a reasonable basis for belief that the investment was genuine.

HSBC also hasn't suggested that Ms N ignored an effective warning when she made the payments to the consultancy company. So I don't think HSBC has established that Ms N ignored an effective warning in relation to the payments either.

And so I don't think HSBC has established that any of the exceptions to reimbursement under the CRM code apply here, and so it should refund the money Ms N lost as a result of these payments in full.

Is Ms N entitled to a refund under the ASR rules?

The Payment Systems Regulator introduced the APP Scam Reimbursement (ASR) rules on 7 October 2024 to reimburse consumers who are the victims of APP scams in certain circumstances. So the third payment Ms N made for an investment in the second company was made after these rules came into effect. And so I've considered whether Ms N is entitled to a refund of this payment under these rules.

The definition of a scam under the ASR rules is similar to the definition from the CRM code. So, for the same reasons I set out above in relation to the payments covered by the CRM code, I think the circumstances of this third payment meet the definition of a scam from the ASR rules.

HSBC also hasn't suggested Ms N failed with gross negligence to meet any of the consumer standard of caution requirements set out by the ASR rules. So I don't think it has established that it can decline to reimburse her for this payment, and should therefore refund the money she lost as a result of it.

The ASR rules allow firms to deduct an excess, up to a maximum amount of £100, unless the consumer was vulnerable. And I haven't seen anything to suggest Ms N met the definition of vulnerable here. So I think HSBC is entitled to deduct the excess from the reimbursement of this payment.

Redress

The payments Ms N made which were intended for an investment in the second company totalled £40,000. And, from what I've seen, Ms N didn't receive any returns from her investment in this company. While she did receive some credits into her account from the director of the consultancy company, these appear to either relate to the investment in the first company or were immediately returned to the director. So I don't think it would be fair to deduct any of these amounts from the amount I now think HSBC should refund to her.

And I think the first two payments Ms N made for the investment in the second company should be refunded in full under the CRM code. But the third payment should be refunded, less the £100 excess HSBC is entitled to deduct under the ASR rules. So the total HSBC should refund Ms N then comes to £39,900.

I also don't think any action I would've expected HSBC to take would have prevented Ms N making these payments, as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for HSBC to initially

decline Ms N's scam claim, as it wasn't clear from the evidence available at the time that this was a scam.

But I'm satisfied there was sufficient evidence to conclude that Ms N's attempted investment in the second company was a scam at the point our investigator issued their view, on 14 May 2025. So I think HSBC should now pay 8% interest on the refund, from the date of our investigator's view of 14 May 2025, until the date of settlement.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund Ms N £39,900
- Pay Ms N 8% simple interest on that refund, from the date of our investigator's view

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 6 March 2026.

Alan Millward
Ombudsman