

The complaint

Mr and Mrs S complain that HSBC UK Bank Plc didn't refund them money, that they believe was lost through an Authorised Push Payment ("APP") investment scam.

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.

Mr and Mrs S received a recommendation for an investment opportunity. Mr and Mrs S believed the opportunity involved investing in various companies which were part of the Enterprise Investment Scheme (EIS) and so had associated tax benefits.

Mr and Mrs S made a number of investments between October 2021 and May 2022 from the account they hold with HSBC. Alongside this, they made other payments from a bank account they held with a different provider (those payments do not form part of this complaint).

Mr and Mrs S became concerned that they had fallen victim to a scam, when they heard that the companies they had invested in were being investigated by the police, so they reported the matter to HSBC.

HSBC responded and explained that the matter was subject to a police investigation and it wasn't clear whether there was an intent to scam. It considered the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. However, it said there is a possibility the payments may not be covered by the CRM Code if it is deemed a civil dispute. It added that it was awaiting guidance and it wasn't possible for an outcome to its investigation to be given. It provided referral rights to this service.

Unhappy with HSBC's response, Mr and Mrs S brought their complaint to this service. One of our Investigator's looked into things but didn't uphold Mr and Mrs S's complaint. In summary, she wasn't satisfied there was sufficient evidence to determine that the companies Mr and Mrs S had paid were operating a scam. She added that she thought HSBC were entitled to not give an outcome at this point, due to the ongoing police investigation.

Mr and Mrs S didn't agree with our Investigator's view. In summary, they said HSBC's refusal to provide a refund, citing the police investigation, was unacceptable and that there was substantial evidence that pointed to fraudulent activity.

As agreement hasn't been reached 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.

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'm mindful that, in their submissions to this service, Mr and Mrs S have mentioned actions that another banking provider has taken in respect of reimbursing their customers. That is a decision the other banking provider has made, however it doesn't automatically follow that this service would consider other payment providers should do the same. Here, as I'm required to do, I've looked at the individual circumstances of Mr and Mrs S' complaint.

It isn't in dispute that Mr and Mrs S authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say they have been the victims of an authorised push payment (APP) scam.

HSBC was signed up to the voluntary CRM Code, which was in force at the time Mr and Mrs S made their payments. The CRM Code provided additional protection to scam victims. Under the CRM Code, the starting principle was that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). However, HSBC has effectively sought to rely on provision R3(1)(c) of the CRM Code that allows it to wait for the outcome of an investigation by a statutory body before making a decision. That provision states:

"If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision".

I have therefore firstly considered if it is fair for HSBC to rely on this provision in the circumstances.

Ultimately, HSBC has one of three options available to it. It can either accept a scam has occurred and consider whether it should reimburse Mr and Mrs S under the CRM Code, it can decide that no scam has occurred and therefore not reimburse Mr and Mrs S, or it can decide to await the outcome of an investigation.

As set out above, HSBC has decided to await the outcome of an investigation by the police, and the CRM Code allows it to do so where the outcome of that investigation might inform its decision.

From what I have seen so far, I am not satisfied the evidence available to me indicates a scam has occurred in the circumstances. From the evidence Mr and Mrs S have sent in, which includes letters, shareholder updates and promotional materials, the documentation appears to be professional. Ultimately, what I've seen doesn't indicate that the companies they paid were orchestrating a scam investment in order to induce payments from investors with no intention to use the funds as intended.

I'm also aware that a number of customers did receive tax rebates from HMRC following their investments, as well as returns, which isn't indicative of a company running a fraud. It is possible there have been some questionable sales tactics, but I've not seen sufficient evidence to persuade me that there was an intent to defraud, such that this was a scam rather than a high-risk investment.

HSBC has chosen to rely on provision R3(1)(c) of the CRM Code and await the outcome of the investigation by the police. Because nothing I have seen on file clearly indicates to me that Mr and Mrs S have been the victim of an APP scam, I think it is fair for HSBC to do so.

Mr and Mrs S have provided a Police update regarding these matters. The content of the email doesn't change anything, it reiterates the position, that the matter is still being investigated. It continues to say this is an exceedingly complex investigation. I do appreciate that this is currently under investigation by the police, and I also recognise that this is a complex issue and that there are a number of other enterprise investment schemes that are being looked into.

I do acknowledge that the police investigation may appear to be proof that Mr and Mrs S have been the victim of fraud—as it infers that the police have taken the matter seriously enough to pursue this course of action. However, the purpose of an investigation is to gather evidence. And that will likely go toward investigating what the intent was at the time; the result of which may or may not lead to a prosecution. But in and of itself, an investigation doesn't automatically mean that a fraud has occurred.

I'm mindful that there is the possibility that Mr and Mrs S have been the victim of fraud here. But from the information available to me, I cannot reasonably eliminate the possibility they have instead lost money to a failed investment. It is possible that further evidence may become known at a later date, which may indicate that fraud has taken place. Should such evidence come to light, then Mr and Mrs S can complain to HSBC again, and refer the matter to this office, should they not be happy with the outcome. In any event, where HSBC has relied on R3(1)(c), it should make a decision no later than 15 business days after the outcome of the investigation is known.

I'm sorry to hear of what's happened to Mr and Mrs S and I have a great deal of sympathy for them. They have lost a significant amount of money and I don't doubt they have been badly let down by the companies they invested in. But my role here is to consider HSBC's actions and based on the evidence available I don't think it has acted unreasonably in relying on the provision of the CRM code that it has.

My final decision

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 S and Mr S to accept or reject my decision before 27 October 2025.

Stephen Wise
Ombudsman