

The complaint

Mr S is unhappy that HSBC UK Bank Plc didn't reimburse him after he reported falling victim to a scam

What happened

In May 2024, Mr S learned of an investment opportunity with a firm I'll refer to as C. He was introduced to it through a trusted source. C claimed to have partnerships with local authorities to provide social housing under a "rent-to-rent" model. Investor funds would be used to lease and manage properties for tenants, with local authorities paying rental rates that, it said, were higher than typical market rates.

Mr S decided to invest in one unit for £13,500. This was made across two faster payments of £10 and £13,490. As a result of his payments, it was understood that Mr S would receive a monthly return of £600 for 36 months. Returns were expected to be paid three months after the initial investment. And by the end of the 36 month term, the initial investment would be returned.

In August and September 2024 Mr S received monthly returns of £600 as set out in his property investment payment schedule. But by October 2024, this had stopped. Mr S received an email which raised some concerns about C. And alongside other investors, Mr S had concerns that was operating a scam.

Mr S raised his concerns directly with HSBC. It declined to provide a refund, informing him that it considered his payments to be the subject of a dispute between him and C. A complaint was subsequently raised with HSBC through a professional representative. And in HSBC's response, it then said it was awaiting industry guidance on whether it was possible to review the payments made to C under the Contingent Reimbursement Model (CRM). As such it wasn't possible to progress Mr S's case as a scam.

Unhappy with its response, Mr S referred his complaint to this service. Our investigator upheld Mr S's complaint in full. HSBC disagreed and maintained that it would not refund Mr S. It sought to rely upon a provision with the CRM Code – R3(1)(c) – in saying that it was entitled to pause an outcome to a claim whereby a case is subject to investigation by a statutory body (in this case, the police) and that might reasonably inform their decision.

As an agreement couldn't be reached, the case has since 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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. It's common ground that these payments were authorised by Mr S and

so he is presumed liable at first instance. However, that isn't the end of the story. HSBC was a signatory to the CRM Code which requires firms to pay refunds to victims of APP scams in certain circumstances.

HSBC says the enquiries being made by the police are complex and this service is not necessarily party to the whole facts. As such it considers it premature of this service to decide whether Mr S's case is covered by the CRM Code. Therefore, what I firstly need to consider is whether it's reasonable to delay a determination of this complaint.

The CRM Code gives firms 15 days to respond to claims made under it. Mr S initially raised a scam claim with HSBC in October 2024 and it declined to provide a refund. It considered his payments to be the subject of a dispute between him and C. In its submissions to this service, HSBC has subsequently sought to argue that R3(1)(c) of the CRM Code should apply. That provision of the Code says:

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.

Indeed, the provision within the code gives firms like HSBC an option to delay reaching a decision on claims such as Mr S's. However, by the time of its response to Mr S's complaint and its submissions to this service, HSBC had already made its decision. And it declined Mr S's claim on the basis that it was a dispute between him and C i.e. a civil dispute. Therefore, I'm not satisfied HSBC can now ask for it to be applied retrospectively to delay things.

Furthermore, while there is an ongoing police investigation into C, it's not necessarily the case that the outcome of that investigation would be determinative here. The specific details of the investigation haven't been shared with this service. It's not clear whether any proceedings will concern charges that will have a significant bearing on the issues relevant to this complaint.

I acknowledge HSBC's position that the full facts are something only the criminal investigation by the police will ascertain. Yet the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard of proof ("beyond reasonable doubt") isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases. Furthermore, there is no certainty as to how long the police investigation will take. Our service must consider complaints quickly and with minimum formality. And I don't think it would be appropriate to delay giving an answer on this complaint for an undefined period, unless doing so is likely to significantly help me decide this issue.

At the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Mr S has lost money to an APP scam. Having considered the available evidence regarding C and Mr S's dealings with it, I'm satisfied there is enough to show that the definition is met.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulations 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.”*

I consider it clear Mr S intended to pay C for what he believed was a legitimate purpose - a property investment. So, I've gone on to consider whether C's intended purpose was broadly aligned with that of Mr S at the time the payment was made. If it was not, I've considered whether this was the result of a dishonest deception by C.

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 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 C paying for rent, refurbishments and furnishings for this many agreements.

C claimed to hold contracts with local authorities – as they would need to have done to fulfil the investor agreements. But their beneficiary 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 C – with one confirming an invoice C used to supposedly demonstrate their working relationship was a forgery. A director of C was also removed from Companies House due to their identity being stolen. They had no connection to C. This supports the contention that there was a dishonest deception by C.

Our service has seen evidence that at least six units were sold to multiple investors. This comes from complainants providing the individual property addresses they thought their investment was purchasing across around 100 complaints. This information also shows in around half of those complaints, the addresses were in buildings where the owners have confirmed they didn't have a relationship with 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. All of this makes it seem unlikely C intended to use Mr S's payment for a genuine property development investment.

C's accounts also appear to show a third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing. In practice, they appear to have been used for purposes ranging from cash withdrawals, payments to individuals involved in operating C, to paying jewellers, restaurants and more. There are further substantial withdrawals and payments for which the purpose is unknown.

Around £440,000 C received could be legitimate income, although none of this came from local authorities or social housing providers. But in comparison around £2,500,000 was paid to investors. It's therefore clear this didn't come from genuine income – strongly indicating C were operating a Ponzi scheme.

Overall, there is little to suggest any transactions are consistent with C completing property development for the benefit of investors, and much more to suggest C wasn't using investor funds for the intended purpose. Even if any of the funds C 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 these reasons, I'm satisfied Mr S's payment to C meets the CRM Code's definition of an APP scam – and it's unlikely the outcome of the police investigation will impact this.

I have gone on to consider whether, had HSBC assessed Mr S's claim against the CRM Code as I find it should, the bank would have been liable under the codes provisions to reimburse Mr S.

There are provisions within the CRM Code which permit a firm not to reimburse (or not to fully reimburse) a customer for APP Scam payments where the firm is able to establish that certain exceptions can be applied.

I have considered whether any of those exceptions can correctly be applied to Mr S's payments under the provisions of the CRM Code.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm. It also states that a firm may choose not to reimburse a customer if it can establish that, in all circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments 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.

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

The CRM Code sets out that "Effective Warnings should be risk based and, where possible, tailored to the APP scam risk indicators". It also sets out minimum criteria that a warning must meet to be an 'Effective Warning' and this includes the warning being 'Clear', 'Impactful' and 'Specific'.

HSBC hasn't provided evidence of any warnings shown when any of these payments were made nor has it argued that Mr S ignored an effective warning. In light of this, I can't fairly say Mr S ignored an effective warning. And in any event, even if the warning had been effective, based on what was known about C at the time of the payment, I don't think it would have been unreasonable for Mr S to make the payment despite a warning.

I'm also not persuaded HSBC could seek to rely on the exception requiring that the payer held a reasonable basis for believing what they did at the time a payment was made. As far as Mr S was concerned, C appeared legitimate at the time with issues only reported until after his payments. Mr S viewed a professional-looking website and received what appeared to be legitimate professional-looking promotional materials. Mr S was recommended the investment by a trusted source who advised they'd carried out their due diligence on C. Mr S also advised he'd met with individuals at C in person that were highly knowledgeable and professional which reassured him. Prior to making any payments, Mr S had also received a contract which outlined the investment and expected returns alongside an invoice that detailed the account he needed to pay. As part of the payment process, Mr S also received a Confirmation of Payee match, which further reassured him he was dealing with a genuine firm.

Overall, I'm satisfied that Mr S made these payments with a reasonable basis for believing he was investing in a legitimate firm. That investment turned out to be an APP scam. It follows that HSBC should now reimburse him under the provisions of the CRM Code.

Putting things right

To put things right, HSBC should refund Mr S's payments to C (less any sums already recovered or returned to him from the scam).

HSBC should also pay 8% simple interest per annum on this amount, from when it originally declined Mr S's claim in October 2024. This is to compensate him for the loss of use of these funds from the point at which they should have been refunded.

In order to avoid the risk of double recovery, HSBC is entitled to take (if it wishes) an assignment of the rights to all future distributions in relation to the scam payments we're upholding that arise, such as from the police investigation and criminal proceedings, before paying the award.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct HSBC UK Bank Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 January 2026.

Mark O'Connor
Ombudsman