

Complaint

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

Background

In early 2024, Mr D learned of an investment opportunity with a firm I'll refer to as C. He saw an advert online, registered his interest and was subsequently contacted by someone who persuaded him to go ahead with the investment. 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 D used his HSBC account to invest £13,500 in April 2024. He transferred that amount across two separate payments. He understood he would receive £600 per month for 36 months, after which his initial investment would be returned. In October 2024, C told Mr D its account had been frozen and interest payments were being stopped. He was told his investment would be returned in early 2025. When Mr D tried to contact the company to enquire further, his calls went unanswered. He concluded he had fallen victim to a scam and notified HSBC. It declined to refund his losses, saying this was a private civil dispute and not an authorised push payment (APP) scam.

Mr D was unhappy with that response and so referred his complaint to this service. HSBC maintained it would not refund Mr D and relied on a provision of the Contingent Reimbursement Model Code (CRM Code) – R3(1)(c) – in saying that it was entitled to postpone taking a decision on the claim until an investigation by a statutory body (in this case, the police) had concluded.

An Investigator upheld the complaint in full, but HSBC disagreed, so the case has come to me for 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.

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 D 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 has said that, given that C is subject to a substantive police investigation, it would be premature to decide now that Mr D's case is covered by the CRM Code. The first question,

therefore, I have 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. HSBC initially declined Mr D's claim on the basis that he wasn't the victim of a scam, but he had a private civil dispute with C. It subsequently has 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.

This gives HSBC an option to delay reaching a decision on Mr D's claim. However, it had already made its decision and declined it on the basis that it was a private civil dispute. I don't think it 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.

Any criminal proceedings that may take place in connection with C will be based on the criminal burden of proof – i.e. whether the charges have been proven beyond all reasonable doubt. This service decides cases on the balance of probabilities. There is also no certainty as to how long this investigation will take. It could run into many months or even years. Our service must consider complaints quickly and with minimum formality. 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.

What I need to decide here is whether, on balance, Mr D was scammed by C – i.e. whether what happened to him meets the relevant parts of the CRM Code's definition of an APP scam. Having considered the available evidence regarding C and Mr D's dealings with it, I'm satisfied there is enough to show that the definition is met.

The CRM Code defines an APP scam as:

"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 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 D intended to pay C for what he believed was a legitimate purpose (for a property investment). So, I've gone on to consider whether C's intended purpose was broadly aligned with that of Mr D 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 D'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 B's payment to C meets the CRM Code's definition of an APP scam.

The starting position under the code is that a firm should refund victims of APP scams – as I've determined Mr D is. However, there are some exceptions under the rules which, if applicable, firms can rely on to decline reimbursement.

Broadly summarised, the CRM Code allows a firm to not reimburse its customer if it can show 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 the person or business with whom they transacted was legitimate.

HSBC hasn't provided evidence of any warnings shown when any of these payments were made nor has it argued that Mr D ignored an effective warning. As a result, I'm satisfied that exception doesn't apply here. I have also considered whether he acted reasonably when making these payments, and whether there were any warning signs that should have alerted him to the possibility that this was not a genuine investment. On balance, I am satisfied that he had a reasonable basis for believing the investment was legitimate, and I will explain why.

C presented itself convincingly as a legitimate business. Mr D viewed a professional-looking website and received well-designed promotional materials. Before investing, he had a detailed video call with a representative of C, who came across as professional and persuasive. Mr D says he carried out online research to confirm the company's legitimacy and found nothing concerning. That's understandable – there appear to have been no online reviews questioning its credibility until after he had invested.

Mr D was also presented with evidence indicating that the rents payable to C under these agreements were supported by a guarantee from central government. So, although the returns on offer were generous, I understand why he considered them credible if he believed C had effectively secured a guaranteed income stream funded by the UK government.

Overall, I'm satisfied that Mr D 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.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr D accepts my final decision, HSBC UK Bank Plc should refund the money he lost to the scam, less the returns he received. It should also add 8% simple interest per annum calculated to run from the date it declined his claim until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 December 2025.

James Kimmitt
Ombudsman