

The complaint

Mrs O complains that HSBC UK Bank Plc ('HSBC') won't reimburse the funds she lost when she says she fell victim to a scam.

What happened

Mrs O says that in April 2021 she wanted to invest in property and saw a listing on a well-known site in respect of a holiday lodge in a park. She registered her interest and received a call from the sales team who also provided her with a brochure. After reviewing the information, Mrs O decided to invest. In April 2021 she made five payments totalling £105,049 to a company I'll call B in this decision. Mrs O understood she would receive a return of 8% for five years, at which point her funds would be returned along with an additional 10% of her initial investment.

Between July 2021 and April 2024 Mrs O received the returns she expected. A company linked to B, which I'll call A, then went into administration in May 2024.

Mrs O reported what had happened to HSBC and then, in December 2024, she instructed a professional representative to complain on her behalf.

HSBC said that Mrs O has a civil dispute that isn't covered by the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). HSBC went on to say that it didn't make any mistakes in processing the payments Mrs O authorised.

Mrs O was unhappy with HSBC's response and brought a complaint to this service. She said she should be reimbursed under the CRM Code and that HSBC should have taken additional steps when she made out of character payments.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. In summary, he said that there wasn't currently enough evidence to conclude this was an APP scam as set out in the CRM Code. As a result, the investigator said HSBC acted reasonably in concluding Mrs O has a civil dispute with B. But the investigator recognised there are ongoing investigations that may result in new evidence coming to light which Mrs O could ask HSBC to consider.

Mrs O, through her professional representative, didn't agree with the investigator's findings. The submissions made were lengthy, so I will only summarise them here:

- The administrators of A have verbally stated that:
 - o The scheme bears the hallmarks of a sophisticated investment scam.
 - o This service's comment that investors' funds were mainly used for purposes consistent with property development doesn't match the administrator's experience.
- There are significant questions about where investors' money has gone and what it was used for, particularly in respect of funds that went to a company I'll call BW. Over £5million of investors' funds were paid to BW and has disappeared. Mrs O's representative says that the administrator of A says these funds weren't used for their intended purpose.

- In brochures and other material, investors weren't told the truth about planning permission, which didn't exist at all for one site and was only in place for a small number of lodges at another site.
- Those behind the scenes (rather than introducers/advisers involved) set out to create the false impression that investors would own the land and the lodge built on it, which was never the case. Brochures refer to the investments being asset-backed, and many investors were told by companies that arranged the schemes they would own the lodge and the land it was built on.

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 deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

It isn't in dispute that Mrs O authorised the payments I have been asked to consider. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But where the consumer made payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for their bank to reimburse them even though they authorised the payment.

HSBC is a signatory to the CRM Code. Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have considered whether Mrs O's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...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.*

The CRM Code is also explicit that it doesn't apply to private civil disputes.

It is for Mrs O to demonstrate that she is the victim of an APP scam.

To decide whether Mrs O is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs O thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mrs O understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mrs O understood that she was making an investment in the development and operation of a holiday lodge park in Scotland. Nothing I have seen indicates to me she did not think this was a legitimate venture.

I've gone on to consider what purpose B had in mind for the payments it obtained from Mrs O. In reaching an answer on what purpose B, and its linked companies, had in mind, the key information I've considered is as follows:

- B and linked companies owned sites and either had, or sought, planning permission to build and develop holiday lodges on these sites, and lodges were built. This suggests that B and the other companies had a genuine intention to build and/or develop the sites.
- The evidence available doesn't demonstrate that investors' funds were obtained fraudulently or solely for the personal benefit of the directors. I haven't been provided with evidence to show that the funds weren't, in the main, used for business purposes. Mrs O's representatives say they have verbal evidence from the administrator of A that this wasn't the case. Whilst I have no reason to doubt the testimony of Mrs O's representative, I am conscious that they are asking me to reach a decision that it's more likely than not B operated a scam on the basis of verbal comments I haven't heard and in respect of which I have no context.
- Many of the submissions made by Mrs O are about representations made to investors prior to taking out their investments. Whilst some misrepresentations may have been made by agents selling this investment scheme, I don't think this speaks to the intention of B and the other companies involved, including whether they sought to defraud their investors. Misrepresentations made before an investment is entered into wouldn't automatically mean that Mrs O's payments would meet the definition of an APP scam, this would only be the case if these misrepresentations directly related to the purposes of the payments Mrs O made.

It's clear that there are large and complex ongoing investigations by both the administrators of the companies involved and the police. Given the breadth of these investigations, it's difficult for me to be certain that all the available evidence has been obtained from all parties and that all the information relevant to this complaint has been reviewed before I issue my decision.

The investigations haven't yet drawn definitive conclusions as to whether the relevant companies, or their directors, have acted fraudulently. Mrs O's representative has referred to comments made by the administrator, but I don't have evidence yet and I think it's premature to draw conclusions. For completeness, I should also say that fraudulent activity by the companies or their directors may not automatically mean that Mrs O's payments would then meet the definition of an APP scam, given any activity found to be fraudulent may be unrelated to the purpose for which investors' funds were obtained, and instead relate to other activities carried out by the companies.

I have seen evidence which shows that Mrs O was allocated the same plot number as another party. It's possible this reflects fraud. But it's just as likely that this was for a legitimate reason, such as poor administration, or because Mrs O had a share of the unit. To find that B was operating a criminal scam, I'd need to see convincing evidence to show that fraud and criminality is the most likely explanation, not one of a range of possibilities - as is currently the case.

I'm sorry Mrs O has lost such a lot of money. But many businesses fail and enter into administration for genuine reasons, rather than because they were set up to defraud and scam people. Based on what I have seen, I can't fairly say that an APP scam is the more likely scenario here. Mrs O made payments towards a holiday lodge scheme that was purporting to develop the site and rent a lodge. The evidence I've seen doesn't sufficiently demonstrate that B didn't intend to complete the developments and rentals at the time the payments were made. Because of this, I'm not satisfied that Mrs O's claim meets the CRM Code's definition of an APP scam.

If material new evidence comes to light, for example following the completion of investigations by the administrators or the police, Mrs O can ask HSBC to reconsider her claim.

I've gone on to consider whether HSBC could have done more to prevent Mrs O's loss at the time the payments were made. I think the first payment of £25,000 was unusual given Mrs O's usual account activity. But I can't uphold Mrs O's complaint solely on the basis I haven't seen evidence that HSBC intervened. I need to consider causation – whether suitable intervention would have made a difference to Mrs O's decision making or HSBC could have reasonably prevented the loss. In deciding this, I need to consider the information that was available at the time the payment was made.

I'm not persuaded that if HSBC asked Mrs O the kind of questions I'd expect it to in April 2021 it would have had any concerns, or that the payment would not have been made. B 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 Mrs O might be falling victim to a scam.

Overall, whilst I recognise that Mrs O will be very disappointed with my decision and that she has lost a substantial amount of money, I'm not persuaded she is the victim of an APP scam covered by the CRM Code, or that HSBC should have prevented the payments from being made.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 4 December 2025.

Jay Hadfield
Ombudsman