

The complaint

Mrs and Mr S complain that HSBC UK Bank Plc (“HSBC”) have declined to reimburse their losses after falling victim to a scam.

What happened

Mrs and Mr S came across an investment opportunity in a construction company. The company were raising funds from investors, in the form of loans, in order to complete large installation projects, most notable with a well-known chain of hotels. The company offering this investment opportunity will be further referred to as “Company A”.

Satisfied with the information they’d seen, Mrs and Mr S made 17 payments totalling £160,800 between February and May 2024 to Company A.

Then, in June 2024, Mrs and Mr S received confirmation from their friend that her monthly payments had suddenly stopped and that Company A’s accounts had been frozen. Fearing they’d been the victims of a scam, Mrs and Mr S contacted HSBC to request they reimburse their funds.

HSBC investigated the matter but declined to reimburse Mrs and Mr S on the basis that they’d review the matter further once the police or court case is concluded. Unhappy with this response, Mrs and Mr S referred their complaint to our service, via a professional representative.

Our investigator looked into the complaint and upheld it. In summary, they were persuaded the evidence demonstrated that Mrs and Mr S had been the victims of scam and that HSBC should refund their losses under the Contingent Reimbursement Model (CRM) Code. HSBC disagreed with this outcome and provided further evidence and arguments including, but not limited to, the following:

- The case has been progressed prematurely as the matter is being investigated by the police and our service is not party to all the facts; so HSBC are entitled to rely on clause R3(1)(c) of the CRM Code in order to pause giving an outcome on this complaint.
- Our service should dismiss the complaint under DISP 3.3.4A(5).
- It hasn’t been demonstrated whether Mrs and Mr S’s investment was used for the intended purpose. Furthermore, it remains unclear at which point, if any, Company A were acting fraudulently.
- Mrs and Mr S shouldn’t be refunded under the CRM Code as the rate of return was unrealistic.

As the complaint couldn’t be resolved by the investigator it has been passed to me for a 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.

Mrs and Mr S have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mrs and Mr S's complaint. This is not meant to be a discourtesy to Mrs and Mr S, and I want to assure them I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, so the starting position is that HSBC isn't liable for the transactions.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

HSBC also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mrs and Mr S.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing.

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 – as explained above – is the balance of probabilities).

In order to determine Mrs and Mr S'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

Mrs and Mr S were the victims of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

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 Mrs and Mr S 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.

I'm aware the above processes might result in some recoveries for Company A's creditors/investors; in order to avoid the risk of double recovery, I think HSBC would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mrs and Mr S under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the police investigation for me fairly to reach a decision on whether HSBC should reimburse Mrs and Mr S under the provisions of the CRM Code. Further to this, and for the reasons I discuss further below, I don't think it reasonable for me to dismiss this complaint as I don't agree with HSBC that dealing with this complaint seriously impairs the effective operation of our service.

Are the payments caught by the Contingent Reimbursement Model (CRM) Code?

HSBC are a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The Code also explains that it does not apply to *'private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier'*.

The Code also allows a firm to delay its decision if there is an ongoing statutory investigation taking place, which may inform the firm's decision. R3(1)(c) in the CRM Code sets out that *'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.'*

In this case, when Mrs and Mr S raised their complaint, HSBC declined to give an outcome under the Code on the basis that they were waiting for guidance from the banking industry, instead advising that they'd continue monitoring the situation and would be in touch with Mrs and Mr S at a time they'd be able to give an answer on their case.

So, in deciding this complaint, I've carefully considered whether it was fair and reasonable for HSBC to rely on R3(1)(c) and delay making a reimbursement decision. In reaching these conclusions I've thought about whether there is currently enough evidence to decide that the payments Mrs and Mr S made were the result of an APP scam.

In order to reach my decision on this complaint, I've considered the purpose for which Mrs and Mr S made, and Company A received, the payments. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mrs and Mr S made the payments as part of an investment into a construction company. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mrs and Mr S made the payments.

Company A's administrators have confirmed that Company A held genuine contracts with a large hotel chain, which were valued at £4.4million, between 2021 and 2024. However, when it entered administration, Company A owed investors over £25million, which far outweighs the funds required to fulfil their contractual obligations to investors.

Company A's promotional literature also suggests they misled investors regarding future work, with claims that a large hotel chain planned vast refurbishments worth £18million. But, no such income appears in Company A's accounts, with administrators confirming that their actual revenue was substantially lower than that portrayed to investors.

Administrators also reported that only a small portion of investors' funds were used for legitimate business purposes. Misuse of funds included:

- Around \$6million being spent on sponsorship agreement.
- Around £4million being paid to secure investment, which the directors of Company A now allege to be a fraud.
- A payment of £2million was sent abroad for supposed investment, which Company A's directors also claim to be lost to fraud.

A review of the Company A's accounts which our service has been able to obtain show a substantial amount of spending unrelated to the hotel contract, which is consistent with the administrators' findings. Furthermore, the company falsely claimed to hold credit insurance, with the insurer now confirming that no policy existed and the provided policy number was invalid.

Overall, the evidence shows the company operated outside the business model presented to investors. The directors knowingly diverted funds and misrepresented future work and insurance coverage. This demonstrates a dishonest deception on their part.

I accept some funds procured from investors supported legitimate work, and we may not be able to identify which individual payments were used in the manner agreed by both parties. But I'm still persuaded, for the reasons stated above, that this wasn't a legitimate investment opportunity as portrayed by Company A. Instead, it appears that any legitimate work was carried out in order to give the illusion that Company A were legitimate and to induce investors into parting with their funds.

Based on the available evidence, I'm persuaded that the purpose Mrs and Mr S had in mind at the time of the payments differed significantly to that of Company A. I'm also persuaded that this difference was as the result of dishonest deception. Because of that, I'm satisfied that Mrs and Mr S's payments meet the CRM Code's definition of an APP scam.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of

the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues.

I say this as there is no certainty as to what, if any, prosecutions may be brought in future by the police, nor what, if any, new light they would shed on evidence and issues I've discussed. And, as I'm satisfied there is enough evidence available for me to determine that Mrs and Mr S's payments meet the definition of an APP scam as per the CRM Code, I'm not persuaded our service should delay giving an outcome on this complaint. It is for these same reasons that I do not believe it appropriate for our service to dismiss Mrs and Mr S's complaint.

Further to this, I'm persuaded that enough evidence was available at the time Mrs and Mr S raised their claim with HSBC which would've enabled them to have concluded that they were the victims of an APP scam.

Are Mrs and Mr S entitled to reimbursement under the CRM Code?

As I'm satisfied Mrs and Mr S's claim meets the CRM Code's definition of an APP scam, I've considered whether they are entitled to reimbursement of their losses under the Code. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer ignored effective warnings by failing to take appropriate action in response to such an effective warning.
- The customer made the payment 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 other exceptions under the Code, but they do not apply to this case. HSBC haven't provided any evidence to show that Mrs and Mr S were presented with a warning when they made the payments. So, I can't fairly say Mrs and Mr S ignored an effective warning or that HSBC can rely on this exception to decline to reimburse under the Code.

I'm satisfied that Mrs and Mr S had a reasonable basis for believing the investment was legitimate. I say this because they'd met the individuals behind the investment in person, received multiple detailed documents relating to the investment and the companies involved and knew of other investors who were receiving returns. Based on what Mrs and Mr S have explained, I've no reason to believe Mrs and Mr S ought to have been suspicious of these documents or the information contained within them.

I understand that HSBC feels that the rate of return was unrealistic and that Mrs and Mr S shouldn't receive a refund under the Code on that basis. Though the rate of return may be higher than more traditional investments, I don't think this aspect alone is enough to say that they didn't have a reasonable basis for believing that the investment was legitimate when considering the other information they'd received prior to investing.

Taking all of this into account, I'm satisfied that Mrs and Mr S had a reasonable basis for believing that Company A, and the investment, were legitimate. Because of that, I'm satisfied that HSBC cannot rely on an exception to reimbursement.

Could HSBC have prevented Mrs and Mr S's loss at the time of the payments?

I've considered whether HSBC could've done any more at the time of the payments in order to prevent Mrs and Mr S's loss.

There are some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

HSBC also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

I can't see that HSBC spoke to Mrs and Mr S at the time the payments were made. But, even if they had, I'm not persuaded they'd have identified Mrs and Mr S were falling victim to a scam, given its sophistication. I don't think any of the information Mrs and Mr S could've given to HSBC at the time of the payments would've led them to believe that they were at risk of financial harm from fraud.

Because of this I can't say that HSBC missed an opportunity to prevent Mrs and Mr S's losses prior to releasing the payments.

Overall

Overall, I'm not persuaded that HSBC can rely on an exception to reimbursement under the CRM Code and that Mrs and Mr S should receive reimbursement of their losses. I'm also satisfied that it is appropriate for our service to make a determination on Mrs and Mr S's complaint based on the information currently available.

Putting things right

To put things right HSBC UK Bank PLC should:

- Refund the £160,800 Mrs and Mr S lost to the scam.
- Pay interest on that sum at 8% simple per year, calculated from the date HSBC declined to reimburse Mrs and Mr S to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs and Mr S how much it's taken off. It should also give them a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

As there is an ongoing investigation by law enforcement, it's possible Mrs and Mr S may recover some further funds in the future. 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 under the liquidation process in respect of this investment before paying the award. If HSBC elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mrs and Mr S for their consideration and agreement.

My final decision

My final decision is that I uphold this complaint against HSBC Bank UK Plc and require it to reimburse Mrs and Mr S as set out above.

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 16 February 2026.

Billy Wyatt
Ombudsman