

The complaint

Mr and Mrs P complain that HSBC UK Bank Plc ("HSBC") won't refund the money they lost when they fell victims of a scam.

What happened

In December 2019 Mr and Mrs P saw an advert about an opportunity to invest in a company (referred to as R in this decision) which leased cars. They were told the investment would be used to purchase a new vehicle which would then be leased out. The driver would make monthly lease payments, with part of these repayments being passed on to Mr and Mrs P by R over the term of the investment. Mr and Mrs P were told at the end of the investment term, the driver would return the vehicle and Mr and Mrs P would receive their final exit payment from R which would consist of the remainder of capital and interest detailed in the agreement. Mr and Mrs P were also told that the investment was secured against a number of vehicles.

In December 2019 Mr and Mrs P transferred £98,000 to R. Mr and Mrs P told us they received returns totalling £26,201.28 until January 2021. Shortly after this R went into liquidation. This means the outstanding loss to Mr and Mrs P is £71,798.72.

Mr and Mrs P believed they'd been the victim of a scam and contacted HSBC to ask it to return their funds. HSBC declined to refund Mr and Mrs P on the basis that it considered this was a failed investment, rather than a scam.

One of our investigators looked at the complaint. Initially he said there were charges for the vehicles in the agreement and the vehicles were new at the time. He concluded this demonstrated that the business was carrying out investments as per the agreements.

However, Mr and Mrs P's representative pointed out none of the relevant licence plates for the joint investment had category 2 charges and there are no charges for those particular vehicles on Companies House.

Our investigator issued a second view and as there were no charges on Companies' House for this particular investment, the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr and Mrs P and R had in mind, so this met the definition of a scam.

HSBC did not agree with the view and said it wasn't in a position to make a final decision. It asked why we'd initially identified the company had registered a fixed charge in relation to Mr and Mrs P's investment and the vehicles for which they had paid the funds appeared to be new vehicles - therefore they received the service agreed.

The investigator explained that while the specific cars in question were new cars and did exist, there were no charges filed for them on Companies' House, so there was nothing to suggest what the company was purporting to do had taken place.

I issued my provisional decision explaining why I was reaching a different outcome to the latest one reached by the investigator and not upholding the complaint.

HSBC did not respond. Mr and Mrs P's representative, on behalf of Mr and Mrs P, did not agree. It said:

- It is a stretch that we have reached the conclusion we have, even where the charge was registered. Hundreds of people were scammed and the only people that got security were those who relentlessly chased for it.
- It's obvious the directors only went through the motions of registering security. In this case they signed a document that was never processed very shortly before it collapsed. It's an even further stretch to come to the conclusion that it's more likely maladministration rather than the more likely scenario that they weren't going to register it.
- It is not realistic to say R had the intent to fulfil the purpose given that nobody got security if they didn't chase. In this case the client sent money in 2019 and the security document was provided in February 2021. Ultimately the purpose wasn't fulfilled as security wasn't registered.
- In other cases, this service decides to side with the bank where its clear fraud has occurred at a later date - but not at the time the payments were made. When the same approach is in favour of the consumer it's not clear why it's not applied in the same way. It appears to be an inconsistent lose-lose for the consumer.
- Not all evidence in the individual and broader case show there was no intent at the point of payment to fulfil the purpose, the purpose was also ultimately never fulfilled.

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 have considered the response to my provisional decision.

I'm conscious Mr and Mrs P have lost a significant sum of money here and that R didn't deliver what it was supposed to. I'm also aware that this service has issued findings for other complainants where we've concluded R did intend to scam them and their losses have been reimbursed.

But I must consider Mr and Mrs P's complaint on its own merits. And I'm satisfied here that the provision of the charge document over vehicles (albeit it wasn't provided at the time of the investment or actually registered on Companies House) is an important and persuasive consideration. I'm also conscious that there were numerous investors who contracted with R over several years and received all that was promised, demonstrating that there were people R appears not to have set out to defraud.

I do note that charges were registered on Companies House in relation to other investments Mr and Mrs P had. In particular I note that a charge document was provided for an investment Mrs P took out with R in 2018. The charge document was also provided some time after the investment had been taken out and wasn't registered on Companies House until 11 January 2021. This was just a month before the charge document for the investment in question here was signed in February 2021. There was little time to register the charge on

Companies House as R went into liquidation soon after. Mr and Mrs P's representatives haven't been able to provide anything to show this was done maliciously or with an intent to deceive (other than citing what has happened in other cases) rather than simply being a situation of maladministration or simply a change in the financial position with R.

I am sorry Mr and Mrs P have lost so much money – but I have to consider whether, it is fair to hold HSBC accountable for their losses. Having considered everything carefully in this particular case, I don't feel it is.

So, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be not to uphold this complaint. For completeness, I have set this out below.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. HSBC was a signatory to the CRM Code at the time the payments in question in this case were made. As a signatory to the voluntary CRM Code, HSBC agreed to reimburse customers' losses that were not necessarily caused by HSBC itself. It is also the case that different customers may get different outcomes dependent upon individual circumstances and whether the customer's bank is signed up to the Code.

Where a firm was a voluntary signatory of the LSB's CRM Code at the time the payments were made, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

Have Mr and Mrs P been the victim of a scam, as defined in the CRM code?

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment(s) in question, on the balance of probabilities, meet the CRM Code's definition of a scam:

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

"Authorised Push Payment scam, that is, 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."*

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier. So it wouldn't apply to a genuine investment that subsequently failed.

I've considered the first part of the definition, and having done so I'm satisfied that Mr and Mrs P paid the account they were intending to send the funds to. And I do not think there was any deception involved when it comes to who they thought they were paying. So, I do not think the first part of the definition set out above affects Mr and Mrs P's transactions.

I've gone on to consider if Mr and Mrs P's intended purpose for the payment was legitimate, whether the intended purposes he and the company (R) they paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of R.

From what I've seen and what Mr and Mrs P has told us, I'm satisfied Mr and Mrs P made the payment with the intention of investing with the car leasing company. They thought their funds would be used to purchase vehicles which would then be leased out, and that they would receive returns on their investment. And I haven't seen anything to suggest that Mr and Mrs P didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the car leasing company intended a different purpose for the payments, or that Mr and Mrs P's and the car leasing company's purposes for the payments weren't broadly aligned.

Mr and Mrs P received the monthly interest payments they were told they would receive up until the car leasing company entered administration. So it appears the investment was functioning as Mr and Mrs P understood it would do up until this point.

Mr and Mrs P were also told the repayment of their investment with the car leasing company would be secured by way of a legal charge registered over the vehicles they had funded. They were sent a document signed by one of the directors of the car leasing company, which set out the terms of the legal charge and the specific vehicles the charge was over.

And whilst it appears in this case, that the charge wasn't actually registered in Mr and Mrs P's name at Companies House, I am not persuaded this was done maliciously or with an intent to deceive rather than simply being a situation of maladministration. Both Mr and Mrs P had charges registered in their names for different investments (which concerned different vehicles).

Overall, I'm not persuaded the car leasing company deliberately left the charges unregistered in order to avoid acting in line with its agreement with Mr and Mrs P. And I think this suggests on balance the car leasing company intended to provide the investment and security in line with its agreement with Mr and Mrs P.

I appreciate that shortly after Mr and Mrs P signed this document, the FCA got involved and R subsequently went into administration, but I've seen no evidence R had knowledge of this at the time.

I also appreciate that Mr and Mrs P didn't receive all the returns they were told they would and have lost a significant amount of money. But companies can fail to meet the terms of agreements they have made and investments can fail to produce the expected returns for a number of reasons, that don't necessarily mean they have been operating a scam.

So I'm not persuaded the available evidence is sufficient to safely conclude that the purpose the car leasing company intended for these payments was different than the purpose Mr and Mrs P intended. And so I don't think the circumstances here meet the definition of a scam, or that HSBC has acted unreasonably in not agreeing to refund the money Mr and Mrs P lost from these payments as a result.

It's possible that material new evidence may become available at a future date, which suggests that the car leasing company didn't register the charge intending to deceive. If that happens, Mr and Mrs P can ask HSBC to reconsider their claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

I'm sorry to disappoint Mr and Mrs P – especially as this differs to the investigator's second opinion. And I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund them based on the evidence that is currently available.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against the car leasing company's parent company. More information about the FSCS's position on claims submitted against the parent company can be found on the FSCS's website. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under their rules. It might be that the car leasing company's parent company has conducted activities that have contributed to the same loss Mr and Mrs P are now complaining about in connection with the activities of HSBC.

Our service and the FSCS operate independently, however in these circumstances, it's important that we and the FSCS are working together and sharing information to ensure that fair compensation is awarded. More information about how we share information with other public bodies can be found in our privacy notice on our website.

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 P and Mr P to accept or reject my decision before 1 October 2025.

Kathryn Milne
Ombudsman