

The complaint

Mr H complains that HSBC UK Bank PLC (“HSBC”) won’t refund a payment he made as part of a scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat it in detail here. But in summary, I understand it to be as follows.

In 2019, Mr H received funds from a family trust fund and decided to invest in an ISA. Following discussions with a third party, Mr H was given the information of a company offering such an ISA (this company offering this bond will be further referred to as “Company A”).

Satisfied with the information he’d seen, Mr H made a payment of £20,000 from his HSBC account to Company A in October 2019.

In 2021, Mr H received correspondence letting him know that Company A’s assets had been acquired by another company (further referred to as “Company B”). Mr H did not hear any further from Company B following communication in August 2022.

Having not received any returns since April 2021 and lack of communication from Company B, Mr H grew concerned that he’d been the victim of a scam and so asked HSBC to reimburse his loss.

HSBC investigated the matter but declined to reimburse Mr H on the basis that he’d not fallen victim to a scam and that this was, in fact, a civil dispute. Unhappy with this response, Mr H referred his complaint to our service, via a professional representative.

Our investigator looked into the complaint and upheld it. In summary, they were persuaded that the evidence available demonstrated that Mr H had been the victim of scam and that HSBC should refund his 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.
- It hasn’t been demonstrated at which point, if any, Company A were acting fraudulently.
- Mr H shouldn’t be refunded under the CRM Code as the rate of return was unrealistic.
- Our service should dismiss the complaint under DISP 3.3.4A(5).

Before issuing my decision I contacted both HSBC and Mr H’s representatives to let them know that, while my overall decision was the same as the investigator’s, I had identified an

additional payment Mr H received as part of his investment which hadn't been taken into account. Because of this, the redress I intended to award would take this additional payment into consideration. Mr H's representatives confirmed that he was willing to accept this outcome, with HSBC confirming they would await my decision.

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.

Mr H has 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 Mr H's complaint. This is not meant to be a discourtesy to Mr H and I want to assure him I have considered everything he has 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 payment was 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 Mr H.

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 Mr H'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 Mr H was the victim 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 Mr H 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 Mr H under those processes in respect of this investment before paying anything I might award to him 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 Mr H 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.

Has Mr H fallen victim to a scam?

HSBC are a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of 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'*.

In order to reach my decision on this complaint, I've considered the purpose for which Mr H made, and Company A received, the payment. 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 Mr H made the payment towards an investment into a fixed rate bond, which would make money by way of property investments. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mr H made the payment.

In their assessment, the investigator gave numerous reasons as to why they were satisfied that Company A were not operating legitimately. I've reviewed these points, as well as all the other information available in relation to this matter, and I agree with their conclusion. The key points I believe are as follows:

- Following an investigation by the Insolvency Service, Company A and Company B were shut down for misleading investors and failing to co-operate with an investigation into their affairs.
- A director of Company A and Company B has been disqualified as a director on Companies House for eight years by the secretary of state.
- Company A claimed to have assets of £34million but never filed any accounts with Companies House and were never independently audited. Given this lack of information, along with their refusal to co-operate with the Insolvency Service's investigations, there's no evidence of the £34million worth of assets Company A claimed to have owned existing or any evidence that any security had been given to investors.
- Company A claimed that investments were secure due to Financial Services Compensation Scheme (FSCS) protection, which wasn't true.
- There are examples that Company A's brochures claimed to have agreements in place with councils to lease local authority properties. One of the councils included in these claims has confirmed to our service that it had no record of any contract or an agreement with Company A or its director.

Ultimately, there's no evidence that Company A used Mr H's or other investors funds in the way and manner agreed or explained. As that's the case, the evidence persuades me that Mr H has fallen victim to an APP scam as defined by the CRM Code.

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 Mr H'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.

Is Mr H entitled to reimbursement under the CRM Code?

As I'm satisfied Mr H's claim meets the CRM Code's definition of an APP scam, I've considered whether he is entitled to reimbursement of his 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 Mr H was presented with a warning when he made the payments. So, I can't fairly say Mr H ignored an effective warning or that HSBC can rely on this exception to decline to reimburse under the Code.

I'm satisfied that Mr H had a reasonable basis for believing the investment was legitimate. I say this because as he'd received multiple detailed documents relating to the investment and the companies involved. Having reviewed this information, it seems very professional and legitimate, so I've no reason to believe Mr H ought to have been suspicious of these documents or the information contained within them.

Further to this, Company A told Mr H that his investment would be managed by an FCA regulated company. Mr H has advised our service that he was aware that the company were in fact in fact regulated at the time of his investment and the involvement of seemingly genuine companies would understandably have made the scam very convincing.

I understand that HSBC feels that the rate of return seems high and should've been of concern to Mr H. But, given the information above, I don't think this aspect alone outweighs the other information and details Mr H had seen, which all appeared to be professional and legitimate. Ultimately, I don't believe the high rate of return is enough, in and of itself, to say that Mr H didn't have a reasonable basis for believing that the investment was genuine.

Taking all of this into account, I'm satisfied that Mr H 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 Mr H's loss at the time of the payment?

I've considered whether HSBC could've done any more at the time of the payments in order to prevent Mr H'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 Mr H at the time the payments were made. But, even if they had, I'm not satisfied they'd have identified Mr H was falling victim to a scam, given its sophistication. I don't think any of the information Mr H could've given to HSBC at the time of the payment would've led them to believe that he was at risk of fraud or financial harm. Because of this I can't say that HSBC missed an opportunity to prevent Mr H's losses prior to releasing the payments.

Overall

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

Putting things right

To put things right HSBC UK Bank PLC should:

- Refund the £20,000 Mr H lost to the scam (minus the £2,475 he received back as returns).
- Pay interest on that sum at 8% simple per year, calculated from the date HSBC declined the claim under the CRM Code 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 Mr H how much it's taken off. It should also give him 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 Mr H 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 Mr H for their consideration and agreement.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank PLC and require them to reimburse Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 December 2025.

Billy Wyatt
Ombudsman