

## The complaint

Mr C complains HSBC UK Bank Plc won't refund the money he lost to what he believes was an investment scam.

In bringing this complaint Mr C is supported by a professional representative, which I'll refer to as 'R'.

## What happened

The background to this complaint is familiar to both parties, so I'll only refer to some key facts here.

Mr C was introduced to an investment opportunity with a company I'll refer to as 'A', through a property investment company he'd previously invested with. A was offering investors the opportunity to invest in luxury lodge plots, which were being built as part of the wider development of a holiday resort.

Mr C has said he wanted to invest in a holiday property and he was attracted to A as it said the investment was "asset backed", which he understood meant his investment was protected. Mr C was also reassured that the company was backed by a well-known and established European holiday resort operator.

Investors were told they would receive an annual return of 8% on their investment (paid quarterly), plus 110% of the original investment paid back after five years as part of a compulsory buy-back clause.

In March 2023, Mr C paid £73,950 from his HSBC account to A. He received expected returns between April 2023 and April 2024. In August 2024, Mr C received a letter from A's administrators advising A had gone into administration in May 2024 and that investors were unlikely to recover their investments. He also discovered that a Joint Venture Agreement between A and the company that was managing the development ('B'), was being contested at court, and there was an ongoing disagreement due to debts owed.

Mr C asked HSBC to reimburse his losses under the Contingent Reimbursement Model (CRM) Code. HSBC noted A had gone into administration in May 2024, as such it considered Mr C's loss stemmed from a civil dispute and not a scam, which meant he was not entitled to reimbursement under the CRM Code. Unhappy with HSBC's response, and with support from R, Mr C referred his complaint to the Financial Ombudsman.

Our Investigator didn't uphold the complaint. While he noted that it was a complex and evolving situation, he was not persuaded there was currently sufficient evidence to support a conclusion that Mr C had lost money to a scam. As such, he considered HSBC had acted reasonably by refusing to reimburse Mr C under the CRM Code.

R disagreed and presented further evidence that it considered demonstrated the investment opportunity was in fact fraudulent. It summarised the evidence under the following grounds:

- Administrators had shared the view that the investment scheme had hallmarks of a sophisticated investment fraud;
- large sums of investors' money had been transferred to other companies associated with L, and L's director, and which was now unaccounted for, but which didn't appear to have been used as investors expected;
- the investment had been misrepresented as "*Fully Asset Backed*", creating the impression that investors would own land and the lodge built on it, when A knew this was not the case.

Our Investigator explained why, despite the further evidence presented by R, he was still not persuaded there was sufficient evidence to reach a conclusion that A was operating a scam, such that HSBC would be required to reimburse Mr C's losses under the CRM Code. In summary, he said:

- the Administrator had been clear that his investigations were still ongoing and that he did not have information about all companies involved in the scheme and so could not see how all funds obtained from investors had been used. While there were hallmarks of a possible fraud, there was insufficient evidence to conclude it was more likely than not fraud. There were other explanations for the issues identified – such as poor administrative practice or bad business practice, which would not meet the bar of fraud - which were equally likely.
- While investor funds were received before land had been acquired, and after an associated company went into liquidation, this could have been for legitimate reasons. And without further evidence of what happened to investor funds it's not possible to determine that A intended to scam investors.
- Although the Administrator had made comments that sales agents had falsely claimed investors would own a unit or land (neither of which were true), there was insufficient evidence to show that A had made dishonest statements to investors, or that it did so in order to defraud investors.

R disagreed. It said it would make further enquiries to obtain relevant account information to determine that investor money wasn't used for the intended purpose. But it considered there was already sufficient available evidence to prove that A had directly misled investors with the promise of security for the investment by way of land ownership, and that this did not just come from third party introducers.

R was granted an extension to provide additional evidence to demonstrate how investor funds had been used. That deadline has now passed and to date R has not provided any further evidence for my consideration, although it recently asked for a further extension to obtain a court order to get the relevant evidence. In the circumstances, taking into account the time both parties have been afforded to provide evidence, I don't think it is appropriate to delay the resolution of this case any further. Although, as I'll explain below, should further relevant evidence come to light in the future, Mr C can ask HSBC to reconsider his CRM claim.

The complaint has now been passed to me to decide.

### **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.

Having done so, I have reached the same outcome as our Investigator and for largely the same reasons. I realise this will come as a disappointment to Mr C but based on the

evidence that is currently available and for the reasons I'll set out, I don't think HSBC is required to reimburse his losses under the CRM Code.

I'm aware I've summarised this complaint and the relevant submissions briefly, in much less detail than has been provided, and in my own words. No discourtesy is intended by this. In this decision, I've focussed on what I think is the heart of the matter here. Therefore, if there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I consider is the right outcome. Our rules allow me to do this, reflecting the informal nature of the Financial Ombudsman as a free alternative to the courts.

My role is to consider the evidence presented by the parties to this complaint and reach what I think is a fair and reasonable decision, based on what I find to be the facts of the case.

I acknowledge the complexity of this case. I am aware that multiple investors have brought claims that they lost money after investing with A, and associated companies. I'm also aware there are other interested parties, including liquidators and the police, who are currently conducting various reviews and investigations; the timelines and outcomes of which are currently unknown. I'm therefore conscious that new information may become available at some point in the future, which may shed more light on the situation than is currently known.

But I can only conclude this case based on the information that is currently available to me. I do not think it would be in the interest of fairness to delay reaching an outcome in this case in the hope of receiving further evidence at some unspecified date in the future which may impact my findings.

Should materially new evidence come to light after I have reached this decision, Mr C would be entitled to ask HSBC to reconsider a claim under the CRM Code, and he could ultimately refer any resulting complaint to the Financial Ombudsman.

### *The CRM Code*

In broad terms, the starting position in law is that a bank 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 or reasonable for the bank to reimburse the customer even though they authorised the payment.

HSBC was a signatory to the voluntary CRM Code, which provided additional protection to scam victims while it was in place. Under the CRM 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 doesn't apply to all APPs which ultimately result in a loss for the customer. It only applies if the definition of an APP scam is met. Here the relevant definition is set out in DS1(2)(a)(ii) of the Code:

*"Authorised Push Payment scam, that is, a transfer of funds...where [...]  
(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 explicit that it doesn't 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."* This would include a failed investment.

In reaching my decision on this complaint, I've considered Mr C's purpose in making the payments and A's purpose in receiving them. If there is a significant difference in these purposes, I have considered whether I can be satisfied that this was because of dishonest deception.

It appears that Mr C's purpose for making his payments was to invest in the development of a luxury holiday lodge resort. In return for his investment, Mr C expected to receive an annual return for 5 years, followed by an additional 10% profit on his capital in year 5. From what I have seen I have no doubt that Mr C believed this was a legitimate venture.

I accept that A failed to deliver what was expected from the investment which has led to Mr C not receiving the returns he expected, as well as the loss of his initial capital investment. But I haven't seen sufficient persuasive evidence to show this was always what A intended; or that at the time of the payments, A planned to use Mr C's funds in a different way to what had been agreed.

There is evidence to support that A, and its associated companies, had broadly the same purpose in receiving funds. In simple terms, the evidence shows that A:

- owned the site to be developed and had, or sought, planning permission to build and develop holiday lodges on it;
- had formed relationships with other companies, seemingly with the intention of carrying out the development, each of which had been incorporated years prior to Mr C's investment;
- installed a number of lodges, which were being let as intended and had received positive online reviews.

Overall, while it's evident A did not achieve its full stated plans, it appears, at least on the face of it, to have started developing the land and letting holiday lodges as it had told investors. As such, there is a prima facie case to say that it was a legitimate business which ultimately failed and not a scam.

To reach an alternative conclusion, I would need to see clear compelling evidence which demonstrated that not only was A not acting as investors intended, but that its purpose in doing so was fraudulent.

I accept there are some issues which have understandably caused investors to have concerns about the legitimacy of the investment scheme and the intentions of A when receiving their funds. And while I will address these in further detail below, overall, I am not persuaded there is currently sufficient evidence to say it's more likely than not A's purpose in receiving payments was fraudulent, or that it was operating a scam.

### *Security of investment*

R considers A misrepresented the nature of the investment, such that investors were falsely led to believe they would acquire ownership of the plot of land on which the lodges sat, and possibly ownership over the lodge itself. R has made the case that investors were therefore falsely induced into the investment believing their funds were secured against land and/or property, when A knew this was not the case.

In support of this, R has referred to brochures which state the investment was "*fully asset backed*", as well as other correspondence which refer to "*Certificates of Ownership*". R has also highlighted some correspondence where reference was made to investors acquiring the

“freehold” to land - which we know was not possible – although this claim was not made by A.

R has provided copies of the “*Limited Registration of Title*” and “*Certificate of Lodge Plot Ownership*” documents Mr C received following his investment. Having reviewed these, I accept it could be argued that there was a lack of clarity about what Mr C was obtaining as part of the investment. What it means to own a lodge plot does not appear to have been clearly defined. But while there may be some ambiguity in the terms of the agreement, this is not enough to say that A misrepresented the terms of the investment.

R has not demonstrated that the statements A made about the investment were in fact false – i.e. that Mr C does not own a lodge plot (albeit I accept this would not be the same as having a share of the freehold, although I can’t see Mr C was told he would). But even if A had misrepresented Mr C’s ownership rights, R has not demonstrated that this was done with fraudulent intent.

There has been no suggestion that Mr C intended to make use of the lodge himself, or that he expected to be able to sell it outside the terms of the compulsory buy-back term of the agreement. The marketing material I have seen is consistent that the investment did not entitle investors to personal use of the lodge, it was also specified that the investor could not sell or exit the investment before the compulsory developer buy-back, which would happen in year five. Ultimately, I’m satisfied that Mr C’s purpose in making payments to the investment was to earn a return on his investment capital, which would be generated from the development of the holiday lodge site.

As I have set out above, the evidence presented in support of this complaint does not sufficiently demonstrate that A did not intend to develop the site as advertised, with the profits being returned to investors as agreed. As such, I cannot reasonably conclude that A made a fraudulent misrepresentation.

#### *Use of funds*

I appreciate there have been questions over how investor funds were used - especially given the development was not completed as expected – and much is still unknown. But in the absence of clear evidence, I cannot safely conclude that investor funds weren’t used as intended.

As our Investigator has addressed in some detail, while I appreciate the administrator has raised some concerns that the investment had some hallmarks of a “*possible fraud*”, he also made it clear that he did not have a complete picture of where funds had gone or how they were used. He noted the need for a much wider investigation, involving various associated companies, to gain a true understanding of how investor funds were spent. Without all the relevant information the administrator could only speculate about the possibility of fraud. This full information about how investor funds were used is still unavailable, and as such, I am in no better position than the administrator to conclude that it is more likely than not a scam.

Ultimately, Mr C made payments to A as part of a holiday lodge rental investment and the evidence presented to our service doesn’t sufficiently demonstrate that A didn’t have the intention of carrying out and completing the developments at the time of the payments.

Because of this, I’m not satisfied that Mr C’s claim meets the CRM Code’s definition of an APP scam.

*Should HSBC have prevented Mr C’s loss?*

Lastly, I've considered whether HSBC could've done any more at the time of the payments to prevent Mr C's loss.

I've not seen evidence to suggest that HSBC intervened and discussed the payments with Mr C prior to releasing them. But, even if it had, I'm not persuaded that the information he'd have presented would've suggested that he might be at risk of financial harm. So, I can't fairly say HSBC could've prevented Mr C's loss at the time.

Overall, I'm not persuaded that Mr C has fallen victim to an APP scam, based on the evidence available. I've no doubt that this will be extremely disappointing to Mr C, given the loss he's suffered and the impact it has undoubtedly had on him, but I'm unable to say that HSBC are liable to reimburse his loss. Should any material new evidence come to light at a later date, for example from the police or the administrators, Mr C can ask HSBC to reconsider his claim. But, as it stands, I can't fairly say HSBC should reimburse his loss under the CRM Code.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

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

Lisa De Noronha  
**Ombudsman**