

The complaint

Mr S complains that HSBC UK Bank Plc ('HSBC') declined to reimburse the funds he says he lost to a scam.

What happened

The circumstances of this complaint are well-known to both parties, so I will not go into every detail of what happened here. But, in summary, Mr S came across an investment opportunity in June of 2023, through a broker/agent from a property investment specialist company. I will call the company offering the investment 'B'. He was told he could invest in a luxury freehold lodge, which would provide returns of 9% per annum over a five-year period. At the end of this period, the lodge would be bought back at 110% of the original investment price. The person from the original property investment specialist company told Mr S that they had done the proper due diligence and visited the sites. Mr S conducted some checks - reviewing the investment literature and reviewing B's website.

Persuaded to invest, Mr S sent an initial deposit of £5,000 to the broker, followed by three payments for £25,000 to B, and a fourth payment of £24,950 to B from his HSBC account. Mr S initially received returns on his investment, totalling just under £5,500. He also received a bonus payment of £1,500 for referring a friend to the investment. However, in around April 2024, the payments stopped. He found out that B had gone into administration, and that it was very unlikely that he would get his investment back. He said that he also found out that the money paid by investors was not used appropriately. There is an ongoing police and trading standards investigation into B. Mr S said he realised he had fallen victim to a scam, and so he reported the matter to HSBC and asked it to reimburse him.

HSBC reviewed Mr S's claim, but it declined to reimburse him. It said that as B had entered into administration and Mr S had received some returns, this amounted to a private civil dispute rather than a scam.

Unhappy with their response, Mr S escalated his concerns to our service where one of our investigators looked into what had happened. They did not recommend that Mr S's complaint should be upheld. In summary, they felt that there was not sufficient evidence to show that B had intended to defraud Mr S from the outset. They said they could not rule out the possibility that this was an investment gone wrong, rather than a scam. And so they did not recommend that HSBC ought to refund Mr S his losses.

Mr S, via his representatives, disagreed with their findings. They raised a number of points in response, and provided further evidence which they said demonstrated that B, its linked companies and the directors had acted fraudulently and that Mr S had been the victim of a scam. As no agreement could be reached, the case has 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.

Mr S's representatives 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 Mr S's complaint. This is not meant to be a courtesy to him, and I want to assure him I have considered everything he has submitted carefully.

When considering what is fair and reasonable, I am 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.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. HSBC was a signatory to the Code at the time the payments in dispute were made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

"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 is also clear at DS2(2)(b) 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"

If I conclude that the payment here meets the required definition of a scam then Mr S would be entitled to reimbursement, unless HSBC has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So, in order to determine Mr S's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that he was the victim of a scam rather than this being a failed or bad investment.

Has Mr S been the victim of a scam, as defined in the CRM Code?

The Code does not 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 would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i)) is met in this case. This is not in dispute. But what is in dispute is whether Mr S's payments meet DS1(2)(a)(ii). So I have gone on to consider if the evidence suggests that his intended purpose for the payments was legitimate, whether the intended purposes he and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of B.

From what I have seen and what Mr S has told us, I am satisfied that he made the payments with the intention of investing. I have not seen anything to suggest that he did not think this was a legitimate venture – and as HSBC argues this is a civil matter, it too seems to accept this.

I have gone on to consider what purposes B had in mind for the payments it obtained from Mr S and whether these purposes were in line with the purposes Mr S had believed, or instead, if they were in fact fraudulent. This is a complex matter, with multiple companies involved and numerous allegations about those parties and their involvement. Our investigator laid out comprehensively and clearly why they thought this amounted to a private civil dispute rather than a scam, and I do not intend to repeat this all here. I am in agreement with their findings and reasoning in their view of the complaint. And in summary, to reach an answer on what purposes 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 homes on these sites. This suggests that there was a genuine intention of B and those other companies 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've been provided with no evidence to show that the funds weren't, in the main, used for business purposes.
- Many submissions have been provided, and allegations made, regarding representations made to investors prior to their investments. Whilst some misrepresentations may have been made by agents or brokers selling this investment scheme, I don't think this speaks overall to the intention of B and the other companies involved (including whether they sought to defraud their investors). Furthermore, misrepresentations made prior to an investment wouldn't automatically mean that Mr S's payments would meet the definition of an APP scam, only in so far as these misrepresentations directly related to the purposes of the payments Mr S made.

It's clear that there are large and complex ongoing investigations by both the administrators of the companies involved as well as 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 prior to the issuance of my decision.

Furthermore, these investigations haven't yet drawn definitive conclusions as to whether the companies, or their directors, have acted fraudulently. But, for completeness, I should state that fraudulent activity by the companies or their directors may not automatically mean that Mr S's payments would then meet the definition of an APP scam, given any given activity found to be fraudulent may be unrelated to the purposes for which investors' funds were obtained and instead relate to other activities carried out by the companies.

B was linked to numerous other organisations, which suffered their own issues. For example, a linked firm which had been regulated by the FCA, had its authorisation removed. The evidence suggests this was due to it being unable to pay the fees levied by the FCA, rather than for any fraud or misconduct. It actually appears that they had borrowed money to finance one of the developments, prior to this investment scheme, which ultimately resulted in serious financial difficulties for that company. Serious financial difficulties does not mean that any fraud or deceptive practices took place then, or when the new scheme was set up.

An administrator from another linked firm has sent our service his current thoughts on the linked firm, and has said that it could show the hallmarks of possible fraud. But, by their own admission, they have not been able to see evidence from B and other linked firms to get a full picture, and without access to enough information they have not been able to establish the true picture of the complexities of this investment scheme. Given the complexities involved there is much that is currently unclear or is simply unknown. In summary, I am in no better position to say this was most likely a deliberate fraudulent scheme than the administrator is.

I understand that there are allegations of investors being allocated the same plot numbers for the lodges. It is possible that the allocation of the same lodge plot number to more than one investor reflects fraud. But I can't discount that it might simply have been poor administration, or a sub-divided share in a single unit, or that this had happened for another legitimate reason. To find that B was operating a criminal scam, I'd need to find that there is convincing evidence to show that fraud and criminality is the most likely explanation not one of a range of possibilities.

I have every sympathy for Mr S as he has lost a substantial amount of money, and has provided a lot of detailed information and evidence relating to his complaint. But, many businesses and investments fail and enter administration for genuine reasons, and not because they were set up to defraud and scam people. Based on what I have seen, I can't say that an APP scam is a more likely explanation. It seems possible that the collapse of the investment was due to what appears to have been a serious breakdown in the joint venture to develop the sites (including the one Mr S invested in). At the moment, that seems as likely to me as the alternative of this having never been a legitimate scheme.

Ultimately, Mr S 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 have the intention of carrying out and completing the developments and rentals at the time of the payments. Because of this, I'm not satisfied that Mr S's claim meets the CRM Code's definition of an APP scam.

Should HSBC have done more at the time of the payments in order to prevent loss to Mr S?

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

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

My final decision

My final decision is that I do not uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 January 2026.

Katherine Jones
Ombudsman