

The complaint

Ms I complains that HSBC UK Bank Plc won't refund the money she lost to what she believes was an investment scam.

Ms I is supported in this complaint by a professional representative, but for simplicity I will refer to Ms I throughout this decision, even when referencing what her representatives have said on her behalf.

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.

Ms I invested in a holiday lodge in Scotland, making payments totalling £74,950 relating to this investment in February 2023. The investment was with a company that will be further referred to as "AP" but Ms I was largely corresponding with another firm "AD" which gave her information about the investment on AP's behalf.

As part of the investment, Ms I would receive a quarterly payout, which was rental income for the holiday lodge, with AP buying back the property after 5 years at 109% of the original purchase price.

Ms I received the expected returns until April 2024, totalling £7,387.92. But she then became aware that AP had gone into administration and that numerous other investors had concerns about the legitimacy of the investment.

Ms I raised a complaint with HSBC, following advice given by Trading Standards, requesting reimbursement of her losses on the basis that she'd been the victim of a scam. HSBC looked into the matter but declined to refund the loss as it considered this to be a civil matter, rather than a scam.

Unhappy with this response, Ms I raised her complaint with our service.

Our Investigator didn't uphold the complaint. While she noted that it was a complex situation, she was not persuaded there was currently sufficient evidence to support a conclusion that Ms I had lost money to a scam. As such, she considered HSBC had acted reasonably by declining to reimburse the losses.

Ms I disagreed and presented further evidence that she felt demonstrated the investment opportunity was in fact fraudulent, including the following points:

- 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;
- The investment had been misrepresented as "Fully Asset Backed", creating the

impression that investors would own land and the lodge built on it, when L knew this was not the case.

Our Investigator explained why, despite the further evidence presented, she was still not persuaded there was sufficient evidence to reach a conclusion that AP was operating a Scam. In summary, she said:

- the Administrator had been clear that investigations were still ongoing and that they 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 AP 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 AP had made dishonest statements to investors, or that it did so in order to defraud investors.

Ms I disagreed, and her representatives said they would make further enquiries to obtain relevant account information to show that investor money wasn't used for the intended purpose. They also stated that they believed there was already sufficient available evidence to prove that AP 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.

Ms I and her representatives were granted an extension to provide additional evidence to demonstrate how investor funds had been used. That deadline has now passed and to date the relevant account statements have not been provided. But 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, Ms I can ask HSBC to reconsider her 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've reached the same outcome as our Investigator and for the same reasons. I realise this will come as a disappointment to Ms I 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 her 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.

I acknowledge the complexity of this case. I am aware that multiple investors have brought claims that they lost money after investing with AP, 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, Ms I would be entitled to ask HSBC to reconsider a claim under the CRM Code, and she could then refer any resulting complaint to the Financial Ombudsman should the need arise.

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 at the time these disputed payments were made. 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 only applies if the definition of an APP scam is met.

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 also 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 order to reach my decision on this complaint, I've considered the purpose for which Ms I made, and AP 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 appears that Ms I's purpose for making the payments was to invest in the development of a luxury holiday lodge resort. Ms I expected to receive quarterly rental income, plus the opportunity to realise an additional profit on her capital if she sold the plot back to AP after 5

years. From what I have seen I have no doubt that Ms I believed this was a legitimate venture.

I accept that AP and its associated companies failed to deliver what was expected from the investment which has led to Ms I not receiving the returns she expected, as well as the loss of her initial capital investment. But I haven't seen sufficient persuasive evidence to show this was what AP intended from the start; or that at the time of the payments, AP planned to use Ms I's funds in a different way to what had been agreed.

In reaching an answer on what purpose AP, and its linked companies, had in mind, the key information I've considered is as follows:

- AP and/or its associated companies owned sites and either had, or sought, planning permission to build and develop holiday homes on these sites. AP had also formed relationships with other companies as part of the development process, and some lodges were built and have since become operational. This suggests that there was a genuine intention 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 clear 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 both AP and the company that introduced Ms I to the investment, I don't think this speaks overall to the intention of the companies involved and whether they had simply sought to defraud their investors. Mis-representations made prior to an investment wouldn't automatically mean that Ms I's payments would meet the definition of an APP scam; which is especially true for any mis-representations made by parties other than AP.

Overall, while it's evident AP 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 it would. As such, there is arguably a 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 AP not acting as investors intended, but that its purpose in doing so was fraudulent.

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 Ms I's payments would then meet the definition of an APP scam, given any given activity found to be fraudulent may be unrelated to the procurement of investors' funds and instead relate to other activities carried out by the companies.

I have every sympathy for Ms I as she has lost a substantial amount of money and I don't; doubt the significant impact that will have had on her. But I'm not persuaded that this was, more likely than not, an APP scam. Many businesses and investments fail and

enter administration for genuine reasons, and not because they were set up to defraud and scam people. I believe that, based on what we currently know, that is most likely to be the case in this instance.

I acknowledge that there are issues which have quite rightly caused concern about how AP and related companies was operating. Specifically, around what investors were told prior to investing, and where the funds sent to AP ultimately ended up. But while it is possible the basis of the investment was deliberately misstated to coerce prospective investors into an investment that would never be fulfilled, it could equally be due to poor business practice and/or administrative errors. And ultimately I don't think I can safely determine which is more likely, based on the evidence that is currently available to me. I'm satisfied that Ms I's purpose in making payments to the investment was, at heart, to earn a return on her 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 AP 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 AP made a fraudulent misrepresentation.

In addition, while I appreciate there have been questions over how investor funds were used, 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, Ms I made payments towards a holiday lodge rental investment and the evidence presented to our service doesn't sufficiently demonstrate that AP 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 Ms I's claim meets the CRM Code's definition of an APP scam. I want to be clear here that I am not saying that Ms I doesn't have a legitimate grievance against AP, but that does not mean that it would be reasonable to say that HSBC should bear any liability for her loss here, given the current circumstances.

Lastly, I've considered whether HSBC could've done any more at the time of the payments to prevent Ms I's loss. But given that I'm not persuaded that any proportionate intervention at the time would have identified any concerns that Ms I might be at risk of financial harm, I can't fairly say HSBC could've prevented the loss at the time.

Overall, I'm not persuaded that Ms I has fallen victim to an APP scam, based on the evidence currently available, so I'm unable to say that HSBC is liable to reimburse her loss.

Should any material new evidence come to light at a later date, for example from the police or the administrators, Ms I can ask HSBC to reconsider her claim. But, as it stands, I can't fairly say it should reimburse the loss under the CRM Code.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 8 January 2026.

Sophie Mitchell
Ombudsman