

The complaint

Mrs Y complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In mid-2023, Mrs Y was looking to make an investment and was told about a company offering an investment in the development of holiday lodges. She was told the lodges would eventually be rented out to generate revenue, and that she would receive quarterly interest payments on her investment and the company would then buy back the lodges at a fixed price after five years. And after looking into the company and reviewing the brochure she was sent, Mrs Y decided to go ahead with the investment.

Mrs Y then made a number of payments from her HSBC account to account details she was given for the investment, as set out below:

| Date | Amount |
|-------------------|---------|
| 28 September 2023 | £20,000 |
| 29 September 2023 | £25,000 |
| 30 September 2023 | £25,000 |
| 2 October 2023 | £24,950 |

Mrs Y initially received the quarterly interest payments, as she was told she would. But she was then told the payment due in July 2024 would be delayed and, in August 2024, was told the company had gone into liquidation. Mrs Y now feels she has been the victim of a scam, so reported the payments she had made to HSBC and asked it to refund the money she had lost.

HSBC investigated but said it felt this was a civil matter between Mrs Y and the company she had paid, rather than a scam. So it didn't agree to refund the money she had lost. Mrs Y wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence was sufficient to say HSBC had acted incorrectly in saying this was a civil dispute. So they didn't think it would be fair to require HSBC to refund the money Mrs Y had lost. Mrs Y disagreed with our investigator, so the complaint has been passed to me.

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.

In broad terms, the starting position at 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 firm to reimburse the customer even though they authorised the payment.

At the time of these payments, HSBC was a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This required firms to reimburse customers who had been the victim of certain types of scams, in all but a limited number of circumstances. But customers were only covered by the code where they had been the victim of a scam – as defined in the code.

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but 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.

I've therefore considered whether the payments Mrs Y made to the company fall under the definition of a scam as set out above, and whether HSBC was wrong in reaching the conclusion that this was a private civil dispute. Having done so, I don't think the evidence shows HSBC was wrong to reach that outcome. I'll explain why in more detail.

In order to determine if Mrs Y has been the victim of a scam, I have to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Mrs Y's understanding

Looking over the agreement Mrs Y has provided, as well as her testimony, I think her understanding was that she was investing in a holiday lodge rental investment scheme which would begin with the development of the holiday site. And I think this was a legitimate purpose.

Were the company's purposes fraudulent?

I've gone on to consider what purposes the company had in mind for the payments it obtained from Mrs Y and whether these purposes were in line with the purposes Mrs Y had believed, or instead, if they were in fact fraudulent.

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

- The company, 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 from the company 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 selling this investment scheme, I

don't think this speaks overall to the intention of the company 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 Mrs Y's payments would meet the definition of a scam, only in so far as these misrepresentations directly related to the purposes of the payments Mrs Y 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 Mrs Y's payments would then meet the definition of a scam, given any 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.

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 the company 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 simply one of a range of possibilities.

I have every sympathy for Mrs Y as she has lost a substantial amount of money and has provided a lot of detailed information and evidence relating to her 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 a scam is a more likely explanation.

Ultimately, Mrs Y 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 the company she paid didn't have the intention of carrying out and completing the developments and rentals at the time of the payments, as set out in their agreement. Because of this, I'm not satisfied that Mrs Y's claim meets the CRM code's definition of a scam.

I've also considered whether HSBC could have done any more at the time of the payments in order to prevent Mrs Y's loss. HSBC has said that none of Mrs Y's payments were held for checks before being released. But, even if HSBC had held the payments and discussed them with her prior to their release, I'm not persuaded the information Mrs Y would have presented would've suggested that she might be at risk of financial harm. This is based on the information available about the company at the time of the payments. So, I can't fairly say HSBC could've prevented Mrs Y's loss at the time.

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

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 2 January 2026.

Alan Millward
Ombudsman