

The complaint

Miss A complains that HSBC UK Bank Plc ('HSBC') won't refund the money she lost after falling victim to a scam.

What happened

The background to this complaint is well known to both parties, so I won't go into detail.

In August 2024, Miss A sent £15,500 to a company I'll refer to as C. Miss A's funds were made as part of an investment which involved social housing. Miss A expected returns of £690 per month. When she didn't receive her first monthly return which was due in November 2024, and couldn't get hold of the broker, she realised it was a scam.

Miss A raised a fraud claim with HSBC asking that they refund her. HSBC said they couldn't provide an answer as they were awaiting guidance from the UK banking industry.

Miss A wasn't happy with HSBC's response, so she brought a complaint to our service.

An investigator looked into her complaint and recommended that HSBC refund Miss A in full. The investigator was satisfied that we could reach an answer based on the information already available that Miss A had been the victim of a scam, and her payment is covered by the Contingent Reimbursement Model Code (CRM Code). The investigator wasn't satisfied that HSBC could rely on an exception to reimbursement as Miss A had a reasonable basis for believing the investment was genuine and HSBC hadn't provided an effective warning.

HSBC disagreed with the investigator's opinion and raised the following points:

- This case is too complex and seriously impairs the effective operation of our service under DISP 2.2.4A(5).
- We're reaching an answer based on assumed generic information about C and without access to key evidence as the police investigation is ongoing.
- This should be deemed a civil dispute under the CRM Code.
- This was a high risk, speculative investment which the CRM Code is not designed to cover.
- We should be applying R3(1)(c) and awaiting the outcome of all external investigations before reaching an answer.
- Awarding interest at 8% on the refund is unfair and puts Miss A in a better position than she would've been in if she had not invested and held her money in a bank account. A lower rate of return would be fairer.

The investigator addressed all of the points HSBC raised in detail. HSBC still disagreed and asked for an ombudsman to review the case, restating that the interest award of 8% is unfair.

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 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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

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 the police investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations 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 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 of 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 Miss A's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not Miss A 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'm aware that Miss A first raised her claim with HSBC in November 2024 and 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 Miss A 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 C'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 Miss A under those processes in respect of this investment before paying anything I might award to her on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for external proceedings to conclude for me fairly to reach a decision on whether HSBC should reimburse Miss A under the provisions of the CRM Code.

Is Miss A entitled to a refund under the CRM Code?

HSBC are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Miss A made her payment, meets the definition of an APP scam, I need to consider the purpose of the payment and whether Miss A thought this purpose was legitimate. The purpose the recipient (C) had in mind at the time of the payment and whether this was broadly in line with what Miss A understood the purpose to be. And, if I decide there was a significant difference in these purposes, whether I'm satisfied this was as a result of dishonest deception.

Miss A was making a payment to C as part of an investment in social housing. Based on the evidence that Miss A had at the time, there wasn't any reason for her to think this wasn't a legitimate purpose.

So, I've gone on to consider what purpose C had in mind and whether it was in line with what Miss A thought.

In reaching an answer on what purpose C had in mind, I've considered the wider circumstances surrounding C.

The investigator set out in detail the evidence that we've received and relied on in deciding this investment was an APP scam, which was shared with both parties. I won't repeat all of that detail here, but the key points are:

- We've received information from the beneficiary bank which I can't share due to data protection legislation. But this evidence shows it's more likely than not Miss A's funds weren't used for the intended purpose. I say this as C received around £20.2 million from investors and the standard price for a unit was £13,500, meaning C needed to enter into approximately 1,500 property agreements. C's outgoings aren't consistent with this. Around £6 million of investors' funds were used to pay commission to third parties and persons involved in operating C, with a further £1.5 million paid to companies connected to persons involved in operating C. Also, over £400,000 was withdrawn in cash or used for personal purchases and an additional £3 million was paid to individuals or companies, the purpose of which is unknown. So, around one third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing.
- There is little evidence that any transactions made which are consistent with property development were done for the benefit of investors. It's more likely than not the investment capital was being used to fund returns, which suggests C was operating a Ponzi scheme.
- One of C's directors previously listed on Companies House was removed after it became apparent that their identity had been stolen. Also, one local authority confirmed that an invoice used by C had been forged and that it held no relationship

with C. Several other authorities have also confirmed they have no working relationship with C either. C needed to enter into agreements with local authorities or social housing providers to sub-let the properties and generate the returns for investors. But the beneficiary statements don't show incoming payments from local authorities or social housing providers.

- We've received details of some property addresses that investors thought their investment funds were purchasing. Approximately half of these addresses were located in buildings where the owners confirmed they don't have a relationship with C. In some cases, the properties remained derelict or under construction even though they were supposedly generating an income. There is also evidence of at least six units being sold to multiple investors.

Based on this, I'm persuaded it's more likely than not Miss A's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that Miss A's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Miss A is entitled to a full refund unless HSBC can establish that an exception to reimbursement applies.

Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Miss A had a reasonable basis for believing the investment was legitimate. I say this because she researched C and talked to introducers who had personally invested and who shared bank statements showing returns on their investment. Miss A also checked online reviews, Companies House and C's website.

I haven't seen any evidence that suggests there were warning signs that C wasn't offering a genuine investment when Miss A made her payment. So, HSBC can't rely on basis for belief as an exception to reimbursement.

When Miss A made the payment, she was shown an onscreen warning related to the payment purpose she chose of "making an investment".

I'm not satisfied that this warning was effective for the following reasons:

- It refers to being cold called about investments, which doesn't apply to Miss A's circumstances.
- It also refers to customers being told to lie about the reason for the payment, fraudsters using social media to build a relationship and the risks of cryptocurrency investments. None of these features applied to Miss A's circumstances.

Overall, I'm not satisfied that the warning Miss A saw was relevant to the circumstances under which she found the investment or the circumstances relating to C. So, I'm not satisfied that HSBC can rely on this exception to reimbursement either.

As, I'm not satisfied that HSBC can rely on an exception to reimbursement, Miss A is entitled to a full refund of £15,500.

The interest award

As Miss A has been deprived of the use of these funds, she is entitled to simple interest on her refund of 8% per year. HSBC say this is an unfair rate of return, however this is the standard rate we apply, based on when Miss A brought her complaint to our service.

I'm satisfied that when Miss A raised her fraud claim with HSBC, they had sufficient evidence to reach an answer on her claim. So, the interest should be calculated from 15 days after Miss A's claim was made to the date of settlement.

Putting things right

To put things right I require HSBC UK Bank Plc to:

- Refund Miss A £15,500, and
- Pay 8% simple interest per year on the refund, calculated from 15 days after Miss A raised her fraud claim until the date of settlement.*
- 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 administrative process before paying the award.

* If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A how much it's taken off. It should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Miss A, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 10 March 2026.

Lisa Lowe
Ombudsman