

The complaint

Miss W complains that HSBC UK Bank Plc (trading as first direct) has not refunded the money she lost to what she believes was a scam.

What happened

In 2023 Miss W invested in property. This was via a personal loan to an individual I will call Mr C. Miss W had previous dealings with Mr C via his company ('Y') and he had told her about an investment opportunity whereby she would personally loan him funds to allow him to buy properties which he would then sell on for a profit. In May 2023 Miss W invested £76,000 in this scheme from her HSBC account and expected to receive the promised returns within a few months.

Miss W did not receive the returns she had initially been expecting, but did receive regular payments from Mr C up until January 2024, Mr C told her these payments were rent from the properties she had funded. Ultimately though, these payments stopped. Miss W took steps to try and recover her funds from Mr C, but in January 2024 Y went into liquidation, and in March 2024 Mr C was declared personally bankrupt.

Miss W contacted HSBC to say she believed she had been the victim of a scam and to ask for her loss to be refunded. HSBC did not feel able to issue any finding at that time, and so Miss W brought the complaint to this service. At that stage HSBC confirmed that it believed this to be a civil matter, rather than a scam, and therefore that it has no liability to refund Miss W's loss.

Our investigator considered the points made by both parties, and thought carefully about the evidence available, but they also thought that this was most likely a civil dispute, meaning that Miss W would not be entitled to a refund of her loss.

Miss W remained unhappy, and notes that Mr C has since been arrested and one of his properties seized as potentially the proceeds of crime. She maintains that Mr C set out to defraud her and that this should therefore be considered as a scam. As no agreement could be reached, this case has been passed to me for a decision.

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 and having thought very carefully about all the evidence provided by both parties, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Miss W but, whilst I'm sorry to hear of what's happened, and appreciate the significant impact this has had on her, financially and emotionally, I don't think I can fairly hold HSBC liable for her loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand why Miss W feels she has been the victim

of fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which HSBC was signed up to and which was in force at the time the relevant payments were made. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether HSBC therefore ought to reimburse Miss W under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...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 quite explicit that it doesn't apply to all push payments. It says:

“DS2(2) This code does not apply to:

(b) 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.”

In order to determine if Miss W was the victim of a scam, I have to consider if her intended purpose for the payments was legitimate, whether the intended purposes of Miss W and Mr C were broadly aligned and, if not, whether this was the result of dishonest deception on the part of Mr C.

I'm satisfied that Miss W reasonably believed she was making these payments for a legitimate purpose. But having thought very carefully about all that Miss W has said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that Mr C set out with an intent to deceive Miss W about what the funds would be used for.

I acknowledge that there is no evidence to show definitively that Miss W's funds were used to purchase a property, but there is also no evidence to show that Mr C did not *attempt* to purchase a property as initially agreed. And other evidence we have seen does seem to suggest that Mr C and Y were carrying out some business in line with what we might expect to see from property purchase and development. It is certainly possible that Mr C intended to defraud Miss W, but I feel it is also equally possible that he had intended to comply with his agreement with Miss W but that financial difficulties or other events outside of his control meant that ultimately he was unable to meet his obligations to her. And without any clear evidence to demonstrate definitively that Mr C never intended to purchase a property as agreed – which I don't consider we have at this stage – I don't think I can fairly say that these circumstances meet the definition of an APP scam as set out in the Code.

I acknowledge that Miss W ultimately did not receive the returns she was promised, but there are many reasons, other than fraud, why a legitimate business may be unable to meet its obligations. A business may act unprofessionally but still be carrying out legitimate business, or it may begin to experience financial difficulties which mean it cannot meet its commitments. And this service isn't in a position to forensically analyse Mr C and Y's actions

here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that Mr C set out to defraud Miss W.

I know that Mr C has apparently since been arrested on suspicion of fraud related offences, and some of his property seized, but at this stage there is still no definitive outcome of that arrest. Mr C has not been convicted of any crime, and we do not have any clarity around whether the offences he is accused of relate specifically to the payments Miss W made.

Ultimately, Miss W made payments towards a personal investment with Mr C and the evidence presented to our service doesn't sufficiently demonstrate that Mr C didn't have the intention of complying with his agreement with Miss W at that time.

Because of this, I'm not satisfied that Miss W's claim meets the CRM Code's definition of an APP scam. I want to be clear here that I am not saying that Miss W doesn't have a legitimate grievance against Mr C, 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 Miss W's loss. But given that I'm not persuaded that any proportionate intervention at the time would have identified any concerns that Miss W 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 Miss W has fallen victim to an APP scam, based on the evidence 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, Miss W 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 Miss W to accept or reject my decision before 5 February 2026.

Sophie Mitchell
Ombudsman