

The complaint

Mr H complains that HSBC UK Bank Plc trading as first direct won't refund the money he lost when he was the victim of what he felt was a scam.

What happened

Mr H found out about an opportunity to invest in a building company. He had met one of the directors of the company who lived locally to him, and their families became acquaintances. Mr H knew of others in the village who had invested significant amounts and received regular returns. Eventually, Mr H decided to invest as well after receiving brochures and seeing the contracts the building company had.

Mr H understood the building company had a contract to install air conditioning units for a major hotel chain, that his investment would be used to fund this work and that he and his wife, Mrs H, would receive interest payments in return. And he then made two transactions from his HSBC account on 14 October 2021 totalling £100,800.

Mr and Mrs H received interest payments as they were told they would until mid-2024, when the payments stopped. The director said payments had stopped because their business account had been frozen due to a misunderstanding. Unfortunately, the building company then went into administration in September 2024, so Mr H felt he had been the victim of a scam and reported the payments he had made to HSBC.

HSBC investigated but didn't agree to refund the money Mr H had lost as they felt this was a civil dispute and not a scam. Mr H was not satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the available evidence suggested the building company had intended to defraud investors. And they didn't think HSBC had established that it didn't have to refund Mr H here. So, they recommended HSBC refund the money Mr H had lost. HSBC 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.

Is it appropriate to determine this complaint now?

HSBC has argued that the building company and the payments Mr H made are the subject of an ongoing police investigation, and that the CRM code allows for it to wait for the outcome of this investigation before making a decision on whether to reimburse them.

R3(1)(c) of the CRM code says:

“If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm’s decision, the Firm may wait for the outcome of the investigation before making a decision.”

And there is an ongoing police investigation into the building company. So I’ve considered whether the outcome of this investigation is reasonably likely to impact HSBC’s reimbursement decision, and so whether it’s fair for it to rely on R3(1)(c) to delay making a decision on this case.

There may be circumstances and cases where it’s appropriate to wait for the outcome of external investigations and/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 that may ultimately take place 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 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 is the balance of probabilities).

The Lending Standards Board has also said that the code does not require a criminal test to have been met 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, for reasons I’ll explain in more detail below, I don’t think it’s necessary to wait for the outcome of any connected court case for me fairly to reach a decision on whether HSBC should reimburse Mr H under the provisions of the CRM code. I’m not persuaded that the outcome of the police investigation will impact HSBC’s reimbursement decision under the CRM code. And I’m satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with the building company were dishonestly deceived about the purpose of the payments they were making and that Mr H was most likely the victim of a scam. This means his claim reasonably ought to have been assessed and it’s not necessary or reasonable for HSBC to rely on R3(1)(c) of the CRM code.

Has Mr H been the victim of a scam, as defined in the CRM 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.

So in order to determine whether Mr H has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the building company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr H made the payments here with the intention of investing with the building company. He thought the funds would be used to fund work the company had been contracted to do by a major hotel chain, and that he would receive interest payments in return. And I haven't seen anything to suggest that Mr H didn't think this was legitimate.

But I think the evidence I've seen suggests the building company didn't intend to act in line with the purpose for the payments it had agreed with Mr H.

I'm aware the building company did have a genuine contract to carry out work for the major hotel chain it mentioned to investors. But the administrators for the company have confirmed the value of the contract to the company between 2021 and 2024 was £4.4 million, but that when it went into administration the company owed £25.3 million to investors. So the company had raised far more from investors than the available evidence suggested it needed to fulfil the contract.

It also appears the building company had been deceiving investors about future work it would receive from the hotel chain. A number of investors were told the hotel chain planned to refurbish a large number of hotels around the country and that this would lead to around £18 million in revenue for the building company. But there's no evidence of this kind of income on the company's account statements and, as the administrators have said, the actual amount the company received from the hotel chain was significantly lower than this.

The administrators have said they cannot confirm exactly how much of investor's money was used to carry out work for the hotel chain, or in the ordinary course of business, but it is significantly lower than the amount raised by the investors. Administrators also said one director loaned himself around £560,000, which has not been paid back. And that company funds have been spent on a number of seemingly non-company related expenses, including:

- around \$6 million spent on sponsoring an American-based motor racing team between October 2020 and May 2024
- around £500,000 spent by one director on home improvements, which was not paid back to the company
- around £4 million sent to Spanish bank accounts, which the directors of the company say was to raise investment but are now claiming has been lost due to fraud
- around £2 million sent abroad for supposed investment purposes, which the directors of the company have told administrators has now been lost due to fraud committed against the company

Our service has also reviewed information relating to accounts held by the building company. And while I can't share details of this information, it appears to show there was a large amount of spending from the accounts that wasn't related to the company's contract

with the hotel chain or other business purpose and appears to have been used for sponsorship or personal reasons – in line with what the administrators have said.

The building company also told investors it had a credit insurance policy with a large insurance provider, which would provide protection for investors if something went wrong. But the insurance provider has told police that there was no policy in place with the company and that the policy number the building company gave investors didn't match its policy number format.

So I think the available evidence shows the building company wasn't acting in line with the business model and features of the investment it had led Mr H to believe he was making. And so the purpose the building company intended for the payments Mr H made wasn't aligned with the purpose he intended for the payments.

And as the directors will have known they intended to use the majority of investors' funds for a different purpose and were misleading investors about the amount of future work it would receive from the hotel chain and the insurance policy, I also think the discrepancy in the alignment of the payment purposes between Mr H and the building company was the result of dishonest deception on the part of the company.

I appreciate that some of investors' money will have been used to carry out work for the hotel chain, and that we don't know what specific payments the building company received were made towards that work. But, overall, I'm satisfied that this wasn't a legitimate investment and Mr H's and other investors' funds weren't being used in the manner they were led to believe they were. So, regardless of where Mr H's specific payments went, the building company and its model was illegitimate and he was deceived on this point.

I'm also aware that Mr H received a number of interest payments back from the building company, and so did receive some returns on this investment. But a victim initially receiving returns is a common feature of a number of scams, so I don't think this means that the building company was using Mr H's money as he understood or wasn't operating a scam here. Many of the building company's investors were based locally, and so it seems likely the company provided returns to gain trust within local communities.

And I've considered that there may be evidence our service does not have access to or that may become available at a later date. But, for the reasons I've explained above, I'm satisfied there is sufficient evidence available here for me to come to a fair and reasonable decision on this complaint and I don't consider it likely that the outcome of any ongoing investigation would significantly affect the conclusions I have reached.

And so I'm still satisfied it is safe to conclude that the circumstances here meet the definition of a scam from the CRM code.

Is Mr H entitled to a refund under the CRM code?

As I explained above, HSBC was a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code required firms to reimburse customers who had been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr H fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;

- o the payment was for genuine goods or services; and/or
- o the person or business with whom they transacted was legitimate
- The customer ignored an effective warning in relation to the payment being made

There are further exceptions within the CRM code, but these don't apply here.

Mr H was introduced to the building company by one of its directors, who lived locally to him, he had known for a number of years, and he had met in-person a number of times. I think it's reasonable that this will have made him think the company was legitimate and I don't think anything about the way he was introduced to the company or the investment should have caused him significant concern.

The building company had been listed on the government's register of limited companies and filed accounts for a number of years before the payments Mr H made here – he says he checked before making the payments. He was also given a number of assurances by the director, including about the company's continuing relationship with the hotel chain and the insurance policy covering the investment, which I don't think it would be reasonable to have expected him to uncover were false. I can see that he was provided copies of these contracts and the policy prior to investing, and I think this would have further legitimised the company and the investment opportunity. So, I think Mr H took reasonable steps to satisfy himself the investment was legitimate, and I don't think anything he was told should have caused him significant concern that the investment wasn't legitimate.

Mr H also knew several other people locally who had invested with the building company, who had been receiving returns as expected. And I think it's reasonable that this will also have made him think the investment was legitimate.

The way Mr H was told the investment would work doesn't appear to be suspicious, and the returns he was told he would receive don't appear to be too good to be true. And, from what I've seen, his communication with the building company also appears to have been relatively professional. So I don't think there was anything about what Mr H was told about the investment or the communication he received from the building company that ought to have caused him significant concern either.

And so I don't think HSBC has established that Mr H made the payments without a reasonable basis for belief that the investment was legitimate.

HSBC have said that there was no chance they could have provided an effective warning at the time the payment was made that would have prevented further payments from being made. While I do take this point on board, I don't think this changes HSBC's overall position here, as whether any reimbursement is due is then dependent on if any other exceptions apply. As I've explained above, I do not think any other exceptions to reimbursement do apply in the circumstances.

With this in mind, I do not think that it can be established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. I am satisfied therefore, that HSBC should refund Mr H in full under the provisions of the CRM Code.

Putting things right

As H received a number of interest payments back from the building company in relation to these payments, I think it would be fair for these payments to be deducted from the amount HSBC has to refund them. From what I've seen, Mr H's payments to the building company totalled £100,800, and he received interest payments back totalling £32,027.20. So his remaining loss to be refunded is £68,772.80.

I also don't think any action I would've expected HSBC to take would have prevented Mr H making these payments, as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern.

But I do think there was sufficient evidence available at the time Mr H reported the payments and raised their claim with HSBC for them to assess his claim and conclude that he had been the victim of a scam. So I think HSBC should have refunded Mr H's losses in its original response to his claim, and so should now pay 8% interest on this refund from the deadline for its original response to their claim until the date of settlement.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund Mr H the £68,772.80 loss he suffered as a result of this scam
- Pay Mr H 8% simple interest on that refund, from the deadline for its original response to his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 January 2026.

Rebecca Norris

Ombudsman