DRN-6072321

The complaint

Mr and Mrs D complain that HSBC UK Bank Plc ("HSBC") won't refund money they lost when they fell victim to a scam.

They are being represented by solicitors in this complaint.

As it was Mr D who made the disputed payments from his joint account with Mrs D, for ease of reading, I've only referred to Mr D throughout this decision.

What happened

In the autumn of 2019, Mr D was introduced to P, a lighting technology company based in the UK, by a family friend who had invested in the company themselves along with other relatives. The project was to provide proprietary plasma lighting for the cultivation of cannabis on an overseas site that P had leased. An opportunity to take on previously subscribed shares had arisen when one of the investors didn't have sufficient funding to complete.

Mr D understood that he'd be lending money to P for a very short-term to complete a funding requirement. Interest would not be payable on the repayment, but there was a chance of dividends from the shares in the future. After discussing the proposition with P's directors and visiting its site in the UK, Mr D made two payments totalling £600,00 from his HSBC account held jointly with Mrs D. This amount was made up of £200,000 of his own funds, as well as £200,000 each that he borrowed from a family member and a friend.

A total of £200,000 was returned to Mr D around the time when the full sum lent was meant to have been returned. He was asked and agreed to extend the loan repayment term a couple of times. Promises were made regarding the repayment of the remaining amount but weren't kept. Eventually, in late 2022, other investors started looking into P – including one investor who visited the overseas site to discover that there was no functional facility as had been claimed by the main director of P, who I'll refer to as "N". Around the same time, the police also launched an investigation into P. It subsequently went into liquidation, and N was made bankrupt on the petition of Mr D.

Mr D contacted HSBC in November 2022 and made a scam claim. The bank didn't give an outcome to the claim. When he subsequently complained, HSBC told Mr D that it had contacted a trade industry body for further guidance and as such it couldn't give an outcome.

Unhappy with this response, Mr D referred his complaint to our Service. One of our Investigators looked into things and concluded that based on the information provided by the parties to the dispute and relevant third parties, Mr D had fallen victim to an authorised push payment (APP) scam as defined under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code ('the CRM Code'). They recommended that HSBC reimburse Mr D's loss in full along with interest.

Mr D accepted the Investigator's findings, but HSBC didn't. In summary, the bank said that:

- it was reasonable for it not to reimburse Mr D in line with the CRM Code as there was an ongoing police investigation which may impact on the outcome of any refund.
- at present, this was best classed as a civil dispute between Mr D and P, and it was being 'shoehorned' into the CRM Code definition of an APP scam. HSBC said Mr D had invested in a high-risk, unregulated investment and should have been aware that he could lose all his money.
- the Investigator's view was not specific to Mr D, and was a generic assessment that P was a fraudulent investment scheme.
- it didn't think the Investigator's opinion was fair and reasonable as there was insufficient evidence to say there was an intent to defraud Mr D.
- it didn't agree with the interest award of 8% and said this shouldn't be payable at all or be much lower and only begin running within a reasonable period of time after a final, binding, decision.

Another Investigator considered HSBC's appeal, but they agreed with the previous outcome reached. The bank continued to disagree with the recommendation to refund Mr D in full along with interest. It said it didn't consider that Mr D had a reasonable basis for believing that payments to P were legitimate and above board. HSBC said Mr D's professional experience meant that he was well equipped to properly analyse the opportunity presented to him and determine whether it was too good to be true.

As an agreement couldn't be reached, the complaint was passed to me to decide. I wrote to HSBC informally, as I'm allowed to under our rules, to address some of the comments raised in its appeal. The bank has asked me to issue a formal decision. In summary, it maintains it's position that it's premature for our Service to make a scam finding. The bank says that even if P is found to have been operating a scam, a refund isn't due to Mr D as it considers he didn't have a reasonable basis for believing that this was a genuine and bona fide investment. HSBC also continues to disagree that 8% interest should be payable in circumstances in which it took years for our Service to provide an initial view.

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.

When considering what's fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) 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.

The CRM Code

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. HSBC was a signatory to the CRM Code at the time the payments in dispute were made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of an APP scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

> *"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

DS2(2) of the CRM Code says:

> *This Code does not apply to:*
>
> *…*
>
> *(b) private civil disputes, such as where the 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;"*

The CRM Code doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.

Section DS2(2) makes it clear that "private civil disputes" between the paying firm's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

That doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, the CRM Code's publisher, the Lending Standards Board (LSB), has provided guidance that the criminal standard isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Mr D has lost his money to an APP scam.

If I conclude, on the balance of probabilities, that the payments in question meet the definition of an APP scam, as defined above, then Mr D would be entitled to reimbursement unless HSBC is able to show that any of the CRM Code's exceptions at section R2(1) apply.

Is it appropriate to determine this complaint now?

The CRM Code says firms should decide whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

HSBC didn't give an outcome to Mr D's scam claim and said it was awaiting guidance from an industry trade body on how to address payments made to P. When our Service asked the bank for its casefile, the bank said it was relying on section R3(1)(c) of the CRM Code as it wanted to await the outcome of the ongoing police investigation, which it considered to be relevant to its decision. HSBC maintained that stance in response to the Investigator's assessment and, more recently, in its correspondence with me.

While this exception provides a reason why firms may delay providing a claim outcome under the CRM Code, it doesn't impact the customer's right to complaint and subsequently refer the complaint to our Service. Similarly, it doesn't impact our Service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so.

I understand that the police investigation is still on-going, although the progress is unknown. I also understand that the liquidator's enquiries are continuing.

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 based on evidence already available. And it may be that 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 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).

As for investigations by liquidators, these are normally made for the purpose of maximising recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our Service.

In order to determine this complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr D was the victim of a scam rather than P being 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 Mr D first raised his claim with HSBC in November 2022, and I need to bear in mind that the Financial Ombudsman Service is required to determine complaints quickly

and with minimum formality. With that in mind, I don't think delaying giving Mr D an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, 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 Mr D under the liquidation process in respect of this outstanding £400,000 investment before paying anything I might award to him on this complaint.

I think the same principle should also apply if Mr D recovers any money from bankruptcy proceedings he brought against N in his personal capacity in 2023.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of a statutory body investigation for me fairly to reach a decision on whether HSBC should reimburse Mr D under the provisions of the CRM Code.

Has Mr D been the victim of an APP scam, as defined in the CRM Code?

As I've mentioned above, HSBC was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that Mr D's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mr D must have transferred funds to P for what he believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether Mr D's intended purpose for the payments was legitimate, whether the intended purposes of Mr D and P were substantially aligned and, if not, whether this was as a result of dishonest deception on the part of P (including its directors).

Mr D lent a sum of money to P in the second half of 2019 which he believed would be used for the project. He understood that this was a short-term loan P needed to complete its funding requirement. Mr D understood the money he lent would be repaid without interest, and there was a chance of dividends in future from the shares he had acquired. Mr D has said a family friend, who had already invested substantial amounts in P along with other members of their family, had introduced him to P. In addition to reviewing the documentation provided, Mr D had multiple calls with P's directors, and these were also attended by his accountant. Mr D also visited P's offices in the UK. He says his confidence in P's legitimacy was also in part due to P holding an account with a regulated bank in the UK. He explains the directors showed him P's bank statements to evidence this.

I've then considered whether there's convincing evidence to demonstrate that P's purpose of the payments was fraudulent. That is, whether P's purpose must have been to misappropriate Mr D's funds or otherwise deprive him of his money, rather than to use it for the purpose believed by Mr D.

Our Service contacted the police force investigating the matter as well as the liquidator overseeing P's and associated companies' liquidation. Although attempts to obtain further information from the police were unsuccessful, in an email to another individual who made payments to P, I can see that the police have said they can see very little of the funds received from investors being invested back into P; most of it was spent on N and his family's lifestyle. Lifestyle spending was noted by the police in another email to a different investor.

The liquidator shared their preliminary findings and they're aware these will be disclosed in my decision as far as they are relevant to this complaint. The following observations made by the liquidator is of particular relevance to Mr D's complaint:

- following P's incorporation in September 2017, while an undischarged bankrupt, N acted as a de facto director of P and promoted the company as a successor to another company he used to be a director of before it went into liquidation. N was appointed a director of P in June 2018, which is prior to his discharge from bankruptcy. As an undischarged bankrupt, N was prevented from being involved in the formation or management of any company.
- Between September 2017 and July 2018, when N was an undischarged bankrupt, nearly 34% of investor funds were drawn out by him via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.
- Between March 2018 and July 2019, N used investor funds to make rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.

Given the substantial size of these payments, the fact that these preceded Mr D's payments, and N's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors to fund N's lifestyle and make repayments to earlier investors.

The below observations are from the period after Mr D made his payments, but I do consider them relevant to the extent that they provide evidence of P's willingness to deceive investors about the use of their funding.

- Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.
- One of the former directors of the company which was contracted to grow medicinal cannabis in the overseas jurisdiction told an investor that his company had significant funding problems with P, from as early as November 2019 (which is around the time of Mr D's payments). The email, which I've seen, goes on to say that by that point his company had used all its capital and had committed $2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it $1 million, that funding never arrived. The site was left in a state of disrepair, and the director's company in ruins. The director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.

- A review of bank statements of P's account from the relevant time supports the director's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to the company during the relevant period. This leads me to conclude that P had no intention – by the time of Mr D's payment – to fulfil its obligations to contracted company in relation to the project, and therefore it also had no intention to use Mr D's funds as it had led him to believe it would. Instead, based on what the liquidator has noted, it appears that Mr D's funds were used largely for N's personal benefit and repayments to investors.
- Our Service has also seen an email from the general manager of the company that P engaged with in 2018 to carry out construction at the overseas site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis. Also, the email from the former director of the company which was contracted to grow medicinal cannabis corroborates that evidence, stating that lighting was never provided nor cannabis grown on the site.
- The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. One of the investors has alleged that these images were taken from third-party websites. I've reviewed the website links the investor claims the images were taken from and I find that they do support this allegation.
- Further evidence of N's dishonest business practices has been provided to me. I understand that in November 2021, P agreed to make a payment of £2.5 million to another company for the deal it had entered into – to supply P's proprietary lighting in return for a percentage of that company's revenue. When the funds didn't arrive, N claimed to have sent the payment and provided a screen shot of the payment confirmation to evidence this. I've seen a copy of the payment confirmation screen. I've also reviewed the bank statement of the account that money was alleged to have been sent from. Having done so, I can't see the payment in question leaving the account. Moreover, the account balance on the day in question stood at around £80,000. So, it's unclear how P could have made a payment of £2.5 million. I've seen an email from the police to one of the investors where they have confirmed that none of the accounts held by P, connected companies, or N, had a balance that could have cleared that payment.

I consider that this evidence supports a conclusion that N and P were more than capable of the level of dishonesty required for an APP scam such as the one Mr D says he fell victim to. Mr D made the payments believing the purpose was to fund the project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support N's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations. So, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.

Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. The liquidator has already expressed their views. And as regards the police's investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

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

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam. The circumstances in which a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code sets out those exceptions and stipulates that the assessment of whether they can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm.

It also states that a firm may choose not to reimburse a customer if it can establish that, in all the circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

HSBC has confirmed that it's not seeking to apply the effective warnings exception – it says the payments were made through Mr D's relationship manager and there was no scam risk identified. But the bank states Mr D didn't have a reasonable basis for belief when he made the payments. It argues that his professional background as a highly experienced private equity investor is a very important consideration for assessing reasonable basis for belief under the CRM Code, which focuses on the personal characteristics of the customer. HSBC states that the investment opportunity was on any analysis too good to be true, given Mr D lent £600,000 in return for ownership of shares purportedly worth £1.3 million – acquiring shares at 40% of their value – and P lacked relevant licenses and completed premises.

Mr D has told us his experience and skillset are in software development. I don't consider his professional experience in developing software means he should have realised that what he was told about a growing opportunity in investment in medicinal cannabis cultivation was suspicious. Mr D has said he visited P's facility in the UK and spent a day looking at technology, walking around the offices, observing the 'growing room', and talking to P's directors about their plans and technology. At the time Mr D thought the investment in technology was significant, given large quantities of sophisticated equipment to power the plasma lights had been developed. He says he also researched, as far as he could, the many patents for technology to be used that N said had been obtained.

The investment material I've reviewed appears professional, and there was nothing in the public domain at the time about P from which Mr D could have reasonably inferred that a scam was taking place. I've mentioned already that he was introduced to this scheme by a family friend, who had already invested substantial amounts in P along with other members of their family. Given this individual, who was widely regarded in their community, had personally invested in P, Mr D trusted their judgement and integrity. Also, Mr D's accountant was included in the discussions he had with P's directors. He says his accountant was brought in to assess the proposition which, on the evidence presented, was progressing and licenses etc., were being addressed.

It's also worth noting that Mr D was only looking to be repaid the sum he agreed to lent. He's told us that dividend on the shares he acquired was not something that was promised to him, and he didn't rely very much on the valuations and calculations P's directors presented him with – he understood that these were projections.

Overall, I don't think there was anything at the time of his payment that should have given Mr D cause for concern. As I don't think HSBC has established that any of the exceptions to reimbursement under the CRM Code apply here, it should reimburse the amount Mr D lost in full under the provisions of the Code.

Putting things right

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by HSBC *at* the time of the payments would have positively impacted Mr D's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that Mr D would have chosen not to proceed. To be clear, I'm not making a finding that HSBC should have intervened at the time of the payment.

But, having considered the available information, including submissions from third parties and publicly available information which HSBC could have obtained if it wanted to when it received Mr D's claim, I find that the bank should have reimbursed him under the CRM Code when he made a claim.

Ordinarily, I would consider awarding interest from the date a firm rejects the scam claim. Here, HSBC didn't give an outcome to the claim, but it did eventually tell Mr D that it couldn't give an outcome as it was awaiting guidance from the industry. As I consider that HSBC should have reimbursed Mr D when he first made a claim under the Code in November 2022, in the circumstances, I think it would be fair and reasonable that simple interest at 8% per year is paid starting 15 days after HSBC received Mr D's claim. This is to account for the time allowed under the CRM Code for the firm to make a decision.

HSBC argues that it's unreasonable to add interest, or at the very least interest at 8%, as it says this equates to a windfall at the bank's expense. The bank says its being unfairly penalised for the time our Service has taken to decide Mr D's complaint. HSBC also says that we've taken a different approach when deciding complaints about an unrelated alleged scam company. But the circumstances surrounding P and this other company are entirely different. I've already explained why I think HSBC should have reimbursed Mr D when it first received his scam claim. The fact that we gave our initial view on Mr D's complaint in 2025 doesn't change that finding. Awarding interest at 8% for the loss of use of funds remains the standard rate of interest applied by our Service for complaints received at the time in question, and I see no reason to depart from that approach when deciding this case.

With that in mind, in order to put things right, HSBC UK Bank Plc needs to:

- refund Mr and Mrs D the remaining £400,000 lost as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from 15 days after the bank received the claim to the date of settlement.

As P is now in liquidation, it's possible that Mr and Mrs D may recover some further funds in the future. I also understand that bankruptcy proceedings were issued against N by Mr D. 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 liquidation and bankruptcy process in respect of this £400,000 before paying the award. If the bank elects to take an assignment of rights before

paying compensation, it must first provide a draft of the assignment to Mr and Mrs D for their consideration and agreement.

My final decision

My final decision is that I uphold this complaint. HSBC UK Bank Plc needs to put things right for Mr and Mrs D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 26 March 2026.

Gagandeep Singh
Ombudsman