

The complaint

Miss S complains that HSBC UK Bank Plc ('HSBC') won't refund the money she says was lost as the result of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

In summary, Miss S says she was providing seed capital to a company so they could manufacture clothes. Once the clothes had passed quality control and gone to the buyer, Miss S expected to get her investment back along with a percentage as a return.

Miss S made two payments as part of the investment to an individual I'll refer to as T. In May 2024 she transferred £5,200 and in June 2024, she transferred £2,800. Miss S made an earlier payment in February 2024, which is being dealt with under a separate complaint.

Miss S says the investment was being run by an individual I'll refer to as N.

Miss S never received her investment back and says it was a scam. She reported it to HSBC, asking that they refund her. HSBC declined to refund Miss S saying she has a civil dispute with T.

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

An investigator looked into Miss S's complaint and didn't uphold it. The investigator said the Contingent Reimbursement Model Code (CRM Code) applied to Miss S's payments, but that HSBC could rely on an exception to reimbursement. The investigator wasn't satisfied that if HSBC had intervened the scam would've been uncovered as Miss S wasn't truthful about the purpose of the payments.

Miss S disagreed with the investigator's opinion and asked for an ombudsman to review her case. Miss S raised the following points:

- She received evidence of the company's trade order and a contract that outlined the projected returns for all three investments.
- She was expecting to receive back £22,800, but that included the return of £9,000 capital she invested. The returns promised weren't unreasonable or disproportionate.
- HSBC should've intervened and asked questions about the payments and alerted her to any concerns.
- N is a known fraudster, and other victims have been reimbursed.

Having reviewed the case, I reached the same overall answer as the investigator but for different reasons. So, I issued a provisional decision explaining why and giving both parties a chance to respond before a final decision was issued.

My provisional decision

In my provisional decision “What I’ve provisionally decided – and why” section I said:

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 more likely than not to have happened in light of the available evidence.

In broad terms, the starting position at law is that HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer’s account. It’s not in dispute that Miss S authorised the payments, although she did so not realising she would suffer a financial loss as a result.

Having reviewed the evidence, I’ve reached the same overall answer as the investigator but for different reasons.

HSBC is a signatory to the Contingent Reimbursement Model Code (CRM Code), which requires it to reimburse victims of APP scams in all but a limited number of circumstances. But 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 for me to be satisfied that Miss S was the victim of an APP scam under the CRM Code, I need to be satisfied that T was involved in the scam. If T was simply an unwitting victim of the scam, then Miss S’s payments wouldn’t be covered by the CRM Code. As we currently don’t have any evidence that supports T being involved in the scam with N, I can’t apply the CRM Code to Miss S’s payments.

If Miss S has any further evidence from the police which shows fraud charges against T, or evidence that T was party to the scam carried out by N and didn’t use Miss S’s funds for the intended purpose, she can provide it in response to this provisional decision. Suspicion of involvement isn’t enough to meet the definition of an APP scam under the CRM Code. Nor is it sufficient for Miss S to evidence that N was operating a scam, as the payment was made through T.

Despite the CRM Code not applying, there are some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn’t have taken their customer’s authorisation instruction at ‘face value’ – or should have looked at the wider circumstances surrounding the transaction before making the payment.

HSBC also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer’s accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

The first payment Miss S made of £5,200 was unusual and out of character compared to her previous account activity. On that basis, I think HSBC should’ve identified a potential risk of financial harm from fraud and contacted Miss S to discuss the payment.

I would expect HSBC to ask Miss S open and probing questions about the payment and its purpose. It’s clear that Miss S was told not to tell HSBC that the payment was in relation to a production loan and that she should say it was “paying friends and family”. This was so that it wouldn’t be blocked.

However, HSBC should have asked follow-up questions about the purpose Miss S gave. For example, why she was paying her friends or family, what the payment related to, and whether she was expecting the money to be returned. I'm not satisfied that I can fairly say Miss S would've been able to come up with plausible answers to follow on questions that HSBC may've asked, especially as she would have had to give answers in real time and couldn't have waited for the scammer to provide guidance.

So, it's possible that the real purpose of the payment would've come to light in a discussion with HSBC.

Although HSBC didn't intervene with a call to Miss S, when I would've expected one, that doesn't necessarily mean Miss S is entitled to a refund. I have to go on and consider causation – what I think would more likely than not have happened as a result of the conversation.

If Miss S had told HSBC that the money was being made as seed money to fund the production of clothing, I would've expected HSBC to have asked which businesses or individuals were involved with the investment, what documentation or paperwork Miss S had received, what return she was expecting and what checks she had completed to satisfy herself that it was a genuine investment.

I think it's more likely than not Miss S would've told HSBC that it was recommended by a friend she had known for a couple of years and trusted, that her friend had invested and received returns, and the name of the business involved in the clothing production, which I'll refer to as C. She may've shared a copy of the loan agreement she had which was between her and an individual I'll refer to as E, and a copy of the order confirmation from C.

C is a UK incorporated charity that is involved in helping young people find sustainable work. So, any checks in relation to C, would've suggested that it was a genuine company. Also, the order confirmation from C looked legitimate and used the genuine company's logo. The investment being referred to Miss S by someone she knew and trusted would've reassured HSBC as would their indication that they'd received returns on their investment. It appears that it later came to light that they hadn't received returns, but I'm not persuaded this information was available when Miss S made the payments.

Miss S's contract was with E, and at the time, there wasn't any information to suggest that E wasn't genuine. It was only after Miss S didn't receive the return of her investment that she found out E was an alias for N, and that N was involved in fraudulent schemes. I'm not persuaded that basic checks at the time she made the payments, would've uncovered this information.

HSBC may've suggested that Miss S do further checks, however I think it's unlikely that the information Miss S would've shared with HSBC meant that they could fairly have refused to follow her payment instructions. Or that a warning would've prevented Miss S from making the payment, based on the information available to her and her trust in the friend that made the referral.

On that basis, I'm not satisfied that HSBC can fairly be held liable for Miss S's loss. My provisional decision was that I didn't intend to uphold this complaint.

Responses to my provisional decision

Miss S disagreed with my provisional decision and provided a substantial response, including new evidence. I've summarised the key issues below:

- T solicited funds, directed payouts and received/benefited from diverted monies.
- T worked with N on “*clients, meetings, liaising and delivery/payment dates*”.
- T told Miss S to be dishonest and hide the true purpose of the payments.
- There is evidence from other “victims” of the scam or a similar scam operated by N/T.
- Miss S has concerns about the information provided by HSBC in response to a DSAR.
- There is evidence that a previous investment set up by N and T had “*gone wrong*”
- The order confirmation which appeared to come from C, came from N’s personal email account and was a fabricated document.
- C and another company have confirmed that they were not involved in the investments and that the documents were fabricated and fraudulent.
- Causation shouldn’t be considered on whether Miss S would’ve satisfactorily answered HSBC’s questions but whether HSBC discharged its duty of care.
- Another customer of HSBC who complained about the same investment was allowed to submit evidence before a decision on their claim was made. Miss S didn’t have this opportunity. Also, other investors have been reimbursed by their banks.
- The CRM Code has been incorrectly considered and misapplied in relation to her payments.

HSBC didn’t respond to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority’s Handbook), DISP 3.5.14, says, if a respondent (in this case HSBC) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I’m going to proceed with issuing my final 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.

While I haven’t referred to each individual piece of evidence that Miss S has provided, I would like to reassure her that I have carefully considered it all. But I’ll focus my decision on what I consider to be the key points, the answer I’ve reached and how I’ve reached it.

Does the CRM Code apply to Miss S’s payments to T?

Miss S has raised concerns that the CRM Code doesn’t require evidence from the police for a finding to be made that she was the victim of a scam. This is correct, but Miss S has to provide satisfactory evidence that proves T was party to the scam carried out by N.

Usually, this type of evidence is available after a police investigation and can clearly show the parties involved in the scam, the roles they played, and how the funds were utilised. This evidence isn’t required, but it would provide strong and independently tested evidence to support Miss S’s position.

Miss S has provided a large number of individual screen shots, but she hasn’t included the full chain of messages, which means a lot of the context is missing. As part of this Miss S

has included screen shots from a third party who had made an investment which they say was a scam, which appears to have involved N and/or T. This third-party testimony can't be tested by our service, or verified, and it's only the third party's opinion that they were the victim of a scam.

The messages which Miss S says came from T show poor business practices, and coaching of what to tell the bank if they questioned the payment. While this is suspicious and unethical behaviour, it isn't sufficient to evidence that T was party to the scam. Neither is T soliciting funds from investors, as introducers can be paid a commission for introducing new investors to an investment – it isn't necessarily a sign of scam.

Here, there is a gap between the allegations Miss S has made, and the evidence she has provided to support those allegations.

Having carefully considered all of the evidence, I'm still not satisfied that Miss S has proven that T was party to the scam carried out by N. On that basis, I can't apply the CRM Code to her payments or hold HSBC liable under the CRM Code.

Intervention by HSBC

Miss S feels that causation shouldn't consider whether HSBC would've been concerned based on the information she would've provided, rather whether they have discharged their duty of care to her as a customer.

Miss S has provided evidence to show that the documents she was given in relation to her investments in May and June, as well as the earlier investment in February, were fraudulent and fabricated. But, in considering whether intervention by HSBC would've made a difference, I have to consider the information that was available at the time the payments were made, not information that became available at a later date.

Where HSBC should've identified an APP scam risk, they should've asked open and probing questions as part of their intervention and then acted appropriately based on the information available to them. The fact that they failed to do this, doesn't mean that Miss S is entitled to a refund. I have to go on to consider causation, and whether that intervention would've more likely than not have prevented Miss S's loss.

I'm still not persuaded that Miss S would've shared information with HSBC that meant they should've been concerned or could fairly have refused to follow her payment instructions. HSBC may've suggested that Miss S do further checks, but I'm not persuaded that further checks would've uncovered the scam at the time these payments were made in May and June 2024. Especially as the investment was referred to Miss S by a friend she trusted, and she had paperwork and documentation which appeared to be legitimate.

All of the information about the documents being fabricated wasn't available at the time Miss S made the payments and was unlikely to have come to light based on HSBC asking Miss S questions about the investment.

Based on the evidence, I'm still not satisfied that HSBC should've prevented Miss S's loss at the time the payments were made.

HSBC's response to a DSAR

Miss S's concerns about her DSAR and the information provided by HSBC is a new complaint issue. As such Miss S needs to raise her concerns with HSBC and, if she isn't

happy with HSBC's response, she can bring a new complaint to our service. I will not be addressing points Miss S raised in relation to the DSAR in this complaint.

The outcome HSBC reached on Miss S's complaint

Miss S says HSBC allowed another customer to submit additional evidence before a decision on their fraud claim was made, but they didn't give her this opportunity.

When investigating a fraud claim I'd expect HSBC to ask for the information that it feels is needed to reach an answer, and that may vary depending on the claim – even if it relates to the same investment. As Miss S was unhappy with the outcome reached by HSBC, she was able to bring a complaint to our service and provide any additional information/evidence that she wanted to be considered. I can't fairly say that HSBC have done anything wrong in reaching an answer on Miss S's fraud claim based on the information they had.

Also, while other banks may have reimbursed investors in relation to the same investment with N, that doesn't necessarily mean that Miss S is entitled to be refunded. I have to reach an answer based on Miss S's circumstances and the evidence that has been provided in relation to her payments. And, having reviewed all of the evidence, I'm still not satisfied that I can fairly hold HSBC liable for Miss S's loss or ask them to refund her.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 May 2026.

Lisa Lowe
Ombudsman