

## The complaint

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

## What happened

Mr and Mrs B hold a joint account with HSBC. They are represented in this case, but as the account was in their names, I'll refer to them throughout this decision.

Mr and Mrs B say that they were persuaded to invest with a company I'll refer to as H in my decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr and Mrs B say that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In November 2019 Mr and Mrs B decided to invest and paid H £5,000 on one day and £10,000 the following day.

H has gone into administration. Mr and Mrs B believe the investment wasn't genuine and that they are the victims of a scam. They complained to HSBC in January 2024 and said it failed in its duty of care and should reimburse them under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

HSBC said it couldn't take any action to recover Mr and Mrs B's funds as it considered they have a civil dispute with H. HSBC went on to say it hadn't made any errors.

## *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that he couldn't ask HSBC to consider Mr and Mrs B's complaint under the CRM Code.

Mr and Mrs B didn't agree with the investigator's findings and said that H ran a sophisticated scam. Their representative provided a detailed response, so I have summarised the main points below.

- Projects were completed to show legitimacy for future investments and because the intention was to extract future assets from the group.
- A property was purchased for £2.5m and an administrator's report says it was worth around £16m. Mr and Mrs B said it was very unlikely the company would spend more than the potential value of the property on it, so concluded that the maximum spend on the property would be £30.5m. Mr and Mrs B said this meant £17m wasn't used for property development.
- In respect of another property Mr and Mrs B said, "*it is safe to assume that the company would not have ran the project at a loss and as such with a break even value of £22m, at least £6m was not used for property development.*"
- Another development doesn't appear in the subsidiary company accounts.
- A company that supposedly lent £2.1m to H didn't exist.
- The group's accounts have been manipulated to show loans as assets to present a more favorable investment opportunity.

- H's accounts show some concerning activities and clever accounting.
- H was concealing a bank account which is indicative of a scam.
- A director has removed an asset rich company from the group for his own benefit.

### **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, 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 time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr and Mrs B's claim falls within the scope of the CRM Code, which defines an APP scam as:

*...a transfer of funds executed across Faster Payments...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr and Mrs B to demonstrate that they are the victims of an APP scam.

To decide whether Mr and Mrs B are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs B thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs B understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs B thought they were investing in a property development company. I haven't seen anything to suggest that they didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial

difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I appreciate that Mr and Mrs B believe H completed these developments to draw in investors and with the intention of removing assets from the group. But no persuasive evidence has been put forward to make me believe this is the more likely scenario. The additional points raised by Mr and Mrs B in response to the view are largely based on assumptions and indicate poor business management but don't go far enough to bring their claim within the scope of the CRM Code.

- I haven't been provided with evidence following an investigation by an external organisation which concludes that H was operating fraudulently. Administrators have referred to completing a bank account analysis looking at the movement of funds within the company's bank account. This analysis has been completed but no further details were provided in the most recent update.
- I'm aware that H hasn't filed audited accounts. I have also noted the inaccuracies highlighted by Mr and Mrs B in respect of accounts that have been filed. But I'm not persuaded this evidence goes far enough to demonstrate that H operated fraudulently. In the absence of the kind of evidence I have referred to above, I consider that Mr and Mrs B have provided evidence of financial mismanagement but not of an intention to defraud.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr and Mrs B's payments was different to theirs. So, I consider HSBC acted fairly in not considering Mr and Mrs B's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr and Mrs B can ask HSBC to reconsider their fraud claim.

I'm really sorry to disappoint Mr and Mrs B, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund them based on the evidence that is currently available.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 11 September 2024.

Jay Hadfield  
**Ombudsman**