

The complaint

Ms D complains that HSBC UK Bank Plc ('HSBC') won't reimburse the funds she lost when she says she fell victim to a scam.

What happened

Ms D says that she was persuaded to make an investment 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. Ms D says that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In February 2020 Ms D transferred £10,000 to H.

H has gone into administration. Ms D believes the investment wasn't genuine and that she is the victim of a scam. She complained to HSBC in January 2024 and said it failed in its duty of care to protect her and should reimburse her under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code').

Ms D provided a large amount of publicly available information in relation to H and its subsidiaries and explained why she believes she was the victim of a scam. Her main reasons were:

- The Investment Memorandum provided by H included incorrect, misleading and vague information to induce people to invest.
- H has used a number of techniques to conceal what was really happening to investor funds. For example, the accounting period was changed four times in the ten years H was active. And, in this period, only seven sets of accounts were filed, and small company accounts were filed which contradicts information provided in the Investment Memorandum.
- High commissions of up to 35% were paid to introducers which is indicative of misappropriation of investor funds and is a hallmark of a Ponzi scheme. The payment of such commissions also makes the promised rate of return near impossible to meet.
- Two separate firms of independent auditors resigned. One resigned prior to accounts being filed as they were not provided with sufficient information to complete their audit, and the other after issuing an adverse opinion.
- There was a deliberate movement of assets to ensure debts weren't paid.
- H breached its responsibilities when raising funds from investors as its Investment Memorandum didn't mention that H received loans from institutional investors.

HSBC didn't agree to reimburse Ms D. It said she had a civil dispute with H.

Ms D wasn't happy with HSBC's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She 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 she couldn't ask HSBC to consider Ms D's complaint under the CRM Code.

Ms D didn't agree with the investigator's findings and said that H ran a sophisticated scam. Ms D's 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.
- When administrators were appointed, H owed a total of £33.2 million, £2.1 million of which was owed to the company which developed the first development H completed. This property was purchased for £2.5m and an administrator's report says it was worth around £16m. Ms D said it was very unlikely H 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. Ms D said this meant £17m wasn't used for property development.
- In respect of another property Ms D 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, suggesting the asset has been transferred away from the H group and investors have not received any of the proceeds of sale.
- 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 Ms D'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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Ms D to demonstrate that she is the victim of an APP scam.

To decide whether Ms D is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Ms D 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 Ms D 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.

Ms D thought she was investing in a property development company. I haven't seen anything to suggest that she 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. Ms D's own figures show that substantial funds were used for the intended purpose.

I appreciate that Ms D believes H completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Ms D are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring her claim within the scope of the CRM Code. Whilst H may have misrepresented certain information, not filed accounts, and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Ms D's funds for a different purpose.

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 payments from Ms D was different to Ms D's. So, I consider HSBC acted fairly in not considering Ms D's complaint under the CRM Code.

If material new evidence comes to light at a later date Ms D can ask HSBC to reconsider her fraud claim.

I'm really sorry to disappoint Ms D, as I know she has lost a significant amount of money. But I'm not satisfied that I can fairly ask HSBC to refund her 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 Ms D to accept or reject my decision before 19 December 2024.

Jay Hadfield
Ombudsman