

The complaint

Mrs M complains that HSBC UK Bank Plc won't reimburse her after she lost money to an investment – that she now considers to have been a scam.

What happened

Mrs M has explained that she was introduced to an investment opportunity, provided by a firm that I'll refer to as V, by a family member. This family member had been investing with V for around a year and their investment appeared to be progressing well, based on the regular personalised reports they were receiving. Mrs M has also explained that her family member knew the wife of one of V's directors – which gave her further confidence in the company.

After expressing her interest in the investment, Mrs M had a telephone call with the director of V who was also responsible for trading on the account. He explained that he had ten years' experience in trading, that they were partnered with a Financial Conduct Authority (FCA) authorised broker, they had 400 clients and returns could be expected of around 10-13%. Mrs M was told that no more than 1% of the account balance was ever at risk, as that was the most ever placed in a trade and that return interest was compounded, which was where greater returns could be seen.

Mrs M had also seen that V was registered on Companies House, and V had informed her that it was in the process of being regulated by The CSSF, which Mrs M was told was the European equivalent of the FCA. Mrs M received documentation from V further explaining how its model operated. Mrs M also said V had an online presence and nothing untoward to raise concerns.

On this basis, Mrs M agreed to invest £10,000 with V, which she sent via bank transfer to an account in V's name. Mrs M provided the payment purpose as 'goods and services', which is what V had told her to do, as they were providing a trading service. When making the payment, Mrs V received a warning from HSBC, that advised her that fraudsters can advertise on social media, marketplaces and on websites, that they may build a relationship to develop trust, make offers that are too good to be true and have falsified positive reviews. Mrs M agreed to continue with the payment.

However the payment was then blocked for further questioning and Mrs M spoke with HSBC over the phone. During the call Mrs M was honest that she was paying towards an investment hedge fund, trading Forex and had selected goods and services as the company was providing her a service of trading. She explained how her family member had already invested and that she was attracted by the low risk of losses. She advised the director had provided details of the account to pay into, as well as details for her personal trading account.

The HSBC representative advised that V wasn't registered on Companies House and that investment scams can be sophisticated and provide realistic marketing materials. Mrs M was told that the payment she was making was considered risky and they suggest she double checks where she's sending money by calling a number for the firm she trusts.

Mrs M asked the representative if they were suggesting there's evidence that this is a scam, and was advised that this can't be disclosed. On this basis the payment was unsuccessful.

Mrs M spoke to V and was reassured that payments wouldn't be allowed at all to blacklisted accounts and that HSBC had only stopped the payment due to its value. It suggested Mrs M try to make the payment in smaller amounts. In February 2023, Mrs M then successfully made five payments across two days, totalling £10,000.

In March 2023, encouraged by how her investment was seemingly performing, Mrs M made a further £5,000 investment, across two payments.

However, in May 2023, Mrs M received correspondence from V, regarding concerns over regulation and that as a result, it had been asked to temporarily stop trading.

As a result of the ongoing FCA investigation, Mrs M has come to understand that V wasn't authorised, as it was required to be to provide the services it claimed to be offering and she now considers V was operating a scam.

Mrs M complained to HSBC, and it considered Mrs M's complaint in line with the Contingent Reimbursement Model (CRM) Code, which it is a signatory of. However HSBC didn't consider it was able to provide an answer on her claim until it had received further confirmation from the FCA on the outcome of any investigations. It did however offer Mrs M a total of £350, for the delays in providing her with an answer and for failures in its customer service.

Mrs M remained unhappy and referred her complaint to our service. An investigator considered the complaint and upheld it. He said, on balance, this was a scam and covered by the CRM Code and that none of the exclusions of the CRM Code applied – so HSBC should reimburse Mrs M in full.

In its response to our view, HSBC reiterated that based on the ongoing FCA investigation, it considers it premature for our service to progress complaints against V, and feels Mrs M's case should be paused until the FCA's investigations are published.

As HSBC disagreed with the investigator's view, the complaint has been referred to me for a 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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also 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 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 bank to reimburse the customer even though they authorised the payment.

HSBC is a signatory of the CRM Code. This requires firms to reimburse customers who have been the victims of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

Can HSBC delay making a decision under the CRM Code?

HSBC has maintained that both it, and our service, should wait on the outcome of the FCA's investigation before progressing complaints against V. There is an exception under the CRM Code (R3(1)(c)) that states that firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

While this exception provides a reason why firms *may* delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and 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've therefore gone on to consider below whether we do have enough evidence to proceed at this time with Mrs M's complaint.

Is it appropriate to determine Mrs M's complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. 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 – as explained above – is the balance of probabilities).

In order to determine Mrs M's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mrs M was the victim of a scam rather than 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 Mrs M first raised her claim with HSBC in December 2023 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mrs M an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless,

bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; 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 Mrs M under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the conclusions of FCA investigations for me fairly to reach a decision on whether HSBC should reimburse Mrs M under the provisions of the CRM Code.

Has Mrs M been the victim of a scam, as defined in the CRM Code?

The relevant definition of a scam in accordance with 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, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mrs M has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose she intended for her payments was legitimate, whether the purposes she and V intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of V.

From what I've seen and what Mrs M has told us, I'm satisfied Mrs M made the payments with the intention of investing in forex trading. She thought her funds would be used by V to trade and that she would receive returns on her investment.

But I think the evidence I've seen suggests V didn't intend to act in line with the purpose for the payment it had agreed with Mrs M.

V claimed to be regulated (or in the process of becoming regulated) by the CSSF to Mrs M, and I understand it also claimed to other investors that it was FCA authorised. However, both regulators have confirmed this isn't the case. So V's operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't – and was dishonest with investors on this point.

There is also evidence that V was dishonest with its banking service provider – we've seen evidence again that it claimed to its banking provider to be regulated, as well as it having a partnership with an authorised broker. However that broker has also confirmed it doesn't have a trading account in V's name – or that of the two trading directors. V's banking provider has also confirmed that *none* of the funds received into V's accounts were sent to this broker in question for trading in Forex – as customers had been led to believe was the case.

Therefore, put simply, V was committing a criminal offence by not being authorised when it was required to be - which investors were misled on – and once funds were received by V, they were dissipated in a way that did not align with investor's expectations, to their detriment, and that investors were deceived on this point. I'm therefore satisfied that Mrs M's payments to V meet the CRM Code's definition of an APP scam.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have 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. Based on the evidence listed above, I think there is already sufficient evidence to determine that V was obtaining funds from investors with the intent to defraud. Regarding the FCA investigation, there is no certainty about what, if any, new light will be shed on evidence and issues I've discussed.

Is Mrs M entitled to a refund under the CRM code?

HSBC is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances and it is for HSBC to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having 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

**Further exceptions outlined in the CRM Code do not apply to this case.*

HSBC hasn't provided any commentary, either in its file to us, or following the investigator's view, as to whether it considers any exceptions to the CRM Code should be applied here. And, as explained, it's for HSBC to establish that an exception applies. However, for completeness, I've provided a brief summary below as to why I think Mrs M's complaint should be covered by the CRM Code.

Did Mrs M ignore an effective warning when making payments to V?

Unfortunately, V led Mrs M to believe that the most appropriate warning for her to select when making her payments was 'goods and services', which meant the automated warning she received from her bank didn't specifically cover the hallmarks of this type of scam, but focused more on purchase scams. I've considered the call Mrs M subsequently had with HSBC and I also don't consider this was sufficient to be considered effective under the CRM Code. I don't think, by the end of the call, HSBC had made it sufficiently clear what its concerns were for the payment in question. It had raised that V wasn't registered on Companies House (although this wasn't the case in any event) and that investment scams can be sophisticated, but at the end of the call, the advisor appears to suggest that her concern is that Mrs M hasn't checked the payment details sufficiently. When Mrs M probes on whether there are concerns about the account she's paying, HSBC state it can't confirm this.

Mrs M raised a few points during the call that I think HSBC should've identified and flagged with Mrs M – that she had been directed on which payment purpose to choose, that she was being told her investment was low risk, despite being in Forex and, most critically, by providing the name of the investment firm, there was an opportunity for HSBC to highlight that this firm that appeared to be providing services that it was unauthorised to.

By focusing instead on how Mrs M received the payment details and investment account details I think HSBC failed to highlight the main risk here and in doing so, failed to provide a warning that could be considered effective under the Code.

Did Mrs M have a reasonable basis for belief?

Having considered all the evidence holistically, I think Mrs M did have a reasonable basis for believing she was making a legitimate investment. This wasn't a more typical 'cold call' investment scam – Mrs M had herself approached V and asked to invest, based on the recommendation from family members, who also had a link to one of V's directors.

The scam was clearly sophisticated in its nature, with professional marketing, a website, a platform personalised to investors, regular updates and numerous staff members. V was registered on Companies House and Mrs M was of the understanding that it was undergoing registration with the CSSF - without any advice to the contrary from HSBC on the importance of being FCA registered, I can understand why this would have reassured her on V's legitimacy.

I've thought about the profits Mrs M was led to believe her family member was making, and what she had been advised to expect. While I accept these were high, Mrs M hadn't been guaranteed any specific sum – only that her losses from a trade would never be more than 1% of her account balance – and she was aware that profits fluctuated weekly.

Lastly, HSBC itself suggested that consideration of complaints against V should be paused until the outcome of the FCA's investigation is known. I think this evidences that it was not entirely clear whether this was in fact a scam or not, even with the benefit of hindsight and so it doesn't appear reasonable to have suggested Mrs M should have identified this, prior to many of these warning flags coming to light.

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mrs M's complaint based on the evidence currently available and having done so, I think it is fair and reasonable for HSBC to fully reimburse her under the CRM Code.

Compensation

I've considered the compensation of £350 that HSBC has awarded Mrs M. While, of course, the main cause of Mrs M's distress here was caused by the fraudsters, I think HSBC could have provided clearer communications in its earlier calls with her, as well as keeping her better updated on likely timeframes for her complaint. I think the £350 it offered her as an apology is appropriate for the additional upset this would've caused.

My final decision

My final decision is that I uphold Mrs M's complaint against HSBC UK Bank Plc. I direct HSBC UK Bank Plc to reimburse Mrs M:

- All payments Mrs M made towards the scam, totalling £15,000
- 8% simple interest, from the date of the investigator's view, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 June 2025.

Kirsty Upton
Ombudsman