

The complaint

Mr and Ms J complain that HSBC UK Bank Plc hasn't reimbursed losses suffered as a result of a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only summarise key events here.

Mr and Ms J were introduced to a business that held itself out to be an investment company. I'll refer to it as Company V. It was Mr and Ms J's daughter – Miss J – that introduced Company V.

Miss J had been engaged with Company V for some time already at the time. She'd made her own investments and reported to Mr and Ms J that everything was going well. And so they decided to look into the opportunity further.

Mr and Ms J describe engaging with Company V and being impressed with what was presented to them. The employees they engaged with came across as professional and they were provided with documentation and correspondence which appeared legitimate. There were online videos, seminars, and Q&A sessions.

Happy with what they saw, Mr and Ms J decided to invest. They sent two payments to one of the directors of Company V: £10,000 on 27 July 2022 and a further £18,000 on 20 October 2022.

Mr and Ms J could see returns accumulating on an online portal they'd been given access to by Company V and so all appeared to be going well. But, as time went by, problems started to emerge. The FCA started to investigate Company V and the directors, publishing a warning on its website. And it wasn't long after this that Company V and the parties associated with it became uncontactable. Mr and Ms J were unable to withdraw any of their original investment or the returns they believed had been generated. It was at this stage they realised they'd fallen victim to a scam, and in September 2023 they reported what had happened to HSBC.

HSBC considered what had happened but declined to give an answer to Mr and Ms J's scam claim. It said there were ongoing investigations into Company V which meant it wasn't appropriate for it to give its answer. It said there was some doubt as to whether Company V had been operating a scam or whether it was a genuine business which had failed.

Mr and Ms J were unhappy with HSBC's answer and so brought their complaint to our service. One of our investigators considered the complaint and recommended it be upheld. She was satisfied there was enough evidence of Company V operating a scam and believed Mr and Ms J were due a refund under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code.

HSBC disagreed, believing it was still too early to draw conclusions given ongoing statutory body investigation. And so the complaint has been passed to me for review.

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.

Having done so, I'm upholding it. I'll explain why.

There's no dispute here that Mr and Ms J authorised the payments to Company V. And so, as per the Payment Service Regulations (2017), the starting point at law is that they are responsible for them. That remains true whether those payments were made as part of a scam or otherwise.

But HSBC is a signatory to the CRM Code which is in place to see the victims of scams reimbursed in most circumstances. The Code doesn't apply to all payments made by a customer. Importantly, it wouldn't apply in a situation where a customer had paid a legitimate company that had failed and so been unable to provide the goods/services it was meant to.

HSBC hasn't said whether it thinks Company V was operating a scam or not. It says it's too early to be able to say for sure, especially as there are ongoing statutory body investigations which haven't concluded and where charges are yet to be brought.

Here, HSBC is seeking to rely on provision R3(1)(c) of the CRM Code to defer making a decision on this point. R3(1)(c) says:

"...If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

So I must first decide if HSBC has acted fairly in seeking to delay giving an answer here, or whether it would instead be fair and reasonable to deliver a claim outcome under the Code.

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that statutory body investigations are still ongoing.

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 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 is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximizing 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.

To determine Mr and Ms J's complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr and Ms J were the victims 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 Mr and Ms J first raised this claim with HSBC in September 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 Mr and Ms J 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 Company V's creditors/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 Mr and Ms J 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 me fairly to reach a decision on whether HSBC should reimburse Mr and Ms J under the provisions of the CRM Code.

There are a number of facts that have been established as part of my review of Mr and Ms J's complaint and this service's investigation into many other complaints involving Company V.

- Company V claimed to be working with both the FCA and the CSSF in Luxembourg in pursuit of becoming a regulated company. These claims have proven to be completely false. It's my view such statements were made to try and lure victims in by trying to show an air of legitimacy;
- Company V appeared to have known it needed to be regulated to carry out the activities it claimed to be offering services for and went on to lie about its status. It operated this way in several countries around the world, with various jurisdictions having since highlighted significant concerns with Company V.
- Records show that Company V lied to account providers in the UK about working with the FCA and being regulated;
- Company V and its directors have no relationship with the forex business it claimed to be working with;
- Client funds were meant to be moved and held in the account of a partner firm regulated with the FCA. But this didn't happen. And that funds were sent to the personal accounts of Company V's directors shows an improper method of money management, and one that was at odds with customer intentions;
- Significant sums of client money was moved into cryptocurrency exchanges which was not the purpose of the investment and not something investors knew about. Some funds were also used to make payments direct to investors, indicating a Ponzi scheme in operation;
- There is evidence of client money being used to buy luxury goods including cars and holidays, as well as spending toward gambling;
- There is no evidence to show Company V was able to deliver the kind of returns promised to investors;
- There profits do potentially appear to have been generated through forex trading,

these sums are significantly less than the amounts paid out to investors, again showing that client money was being used to pay 'returns' to other investors. Again, this indicates a Ponzi scheme in operation.

I can accept that there are elements concerning how Company V operate that do suggest it was a – or was attempting to be – a legitimate enterprise. The experience of the directors, the way Company V presented itself (including the use of seminars, Q&A sessions etc), and that it claimed to operate in what might fairly be described as a risky area of investment. However, these features and others like them aren't uncommon in complex and sophisticated investment scams. And I'm satisfied the evidence that's available is enough to show Company V was more likely than not operating a scam.

That being the case, I find that it is fair and reasonable for a scam claim outcome to be reached, and R3(1)(c) can't now be relied upon by HSBC to delay such an outcome.

Having established that the CRM Code applies and that a claim outcome can be reached I need to consider if there are any exceptions to reimbursement that might fairly be relied upon by HSBC. The Code sets out potential exceptions, two of which are relevant to Mr and Ms J's complaint. They are:

- If the evidence demonstrates Mr and Ms J made the payments without a reasonable basis for believing that they were for genuine goods or services;
- If the evidence shows Mr and Ms J ignored what would be considered an 'effective warning' under the Code.

Having considered both potential exceptions, I'm satisfied that neither can be relied upon by HSBC here. I'll first deal with the reasonable basis for belief exception.

I've said already that it was Miss J – Mr and Ms J's daughter – who introduced Company V. She'd already been dealing with it for some time and had seen positive results. She herself had been introduced by an old friend who had known the directors for years. She then met the directors herself.

And so Mr and Ms J's introduction and referral to Company V came from a very trusting place and where all promises appeared to have been met. So I can understand why Mr and Ms J put a good deal of faith in the recommendation they received.

From that point I can't see there were significant details about Company V, how it held itself out, or how it appeared to operate that ought to have caused Mr and Ms J concern. Company V appeared professional and offered investors various resources, including online seminars and Q&A sessions. We know that Company V was operating a complex and sophisticated scam which drew in many investors and millions of pounds.

It is true that the returns being offered by Company V were high. Mr and Ms J recall being told they could expect around a 20% return. But I don't find such a figure to be so concerning or unlikely that it outweighs all the other convincing elements of the scam. And so I'm satisfied Mr and Ms J held a reasonable basis for believing they were making legitimate investments at the time they sent money from their HSBC account.

In respect of the 'effective warnings' exception to reimbursement, it is for HSBC to evidence that such a warning was provided. I haven't seen such evidence and so the exception can't be relied upon.

However, even if HSBC could provide evidence to show it did present a warning at the time the payments were made, and that those warnings met the Code's definition of an 'effective warning', I'm not persuaded the exception could be relied upon. That's because the scam was so sophisticated that I would more likely than not find Mr and Ms J fairly and reasonably would have moved past such a warning, given the circumstances.

I've then decided that the CRM Code does apply to the payments made by Mr and Ms J and that there are no exceptions to reimbursement that can be fairly and reasonably applied. It follows then that Mr and Ms J ought to be reimbursed under the Code and HSBC ought now to compensate them to that effect.

Putting things right

On Mr and Ms J's acceptance, HSBC must:

- Reimburse the £28,000 lost to the scam;
- Pay interest on that sum at 8% simple per year, calculated from the date of our investigator's view (where it was set out why the reimbursement of scam loss was due) to the date of settlement.

As there is an ongoing investigation by statutory bodies, it's possible Mr and Ms J may recover some further funds in the future. 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 process and/or potential prosecutions in respect of this £28,000 investment 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 Ms J for their consideration and agreement.

My final decision

I uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Ms J to accept or reject my decision before 5 August 2025.

Ben Murray
Ombudsman