

The complaint

Mr B complains that HSBC UK Bank Plc ('HSBC') won't refund him the money he lost after falling victim to a scam.

What happened

In 2022 Mr B saw an advert promoted by an individual (I will refer to as L in this decision) for an investment opportunity with a company (I will refer to as V) and involved trading.

Mr B says he attended a conference and networked with other investors – some of whom had received returns and reinvested in the opportunity.

On 28 October 2022 Mr B transferred £5,000 to one of the fund directors of V (who I will refer to as J).

Mr B became aware through other investors it was a scam and was unable to withdraw his investments. So, he reported the scam to HSBC.

HSBC didn't give Mr B a response to his claim. It has said there are ongoing investigations by external organisations, so it is unable to reach an answer on whether Mr B was the victim of a scam and whether he is entitled to a refund.

Mr B was unhappy with the lack of response from HSBC and brought a complaint to our service.

An investigator looked into Mr B's complaint and recommended that HSBC refund him in full. The investigator felt there was sufficient evidence to reach an answer on Mr B's complaint under the Contingent Reimbursement Model Code (CRM Code). The investigator found the evidence supported that it was unlikely Mr B's funds were used for their intended purpose and that they had been obtained by dishonest deception, so his claim was covered by the CRM Code. The investigator also wasn't satisfied that HSBC could rely on an exception to reimbursement under the CRM Code. She therefore recommended a full refund of the £5,000 payment, as well as 8% simple interest from 15 business days after the scam was reported, to the date of the settlement.

HSBC disagreed with the investigator's opinion and raised the following points:

- Trading is potentially still going on, albeit through an affiliate company of V's, so it's possible that Mr B's funds are still being held.
- It's unclear whether there was an intent to scam Mr B.
- Law enforcement action continues, and no charges have been brought at this time. Until those investigations conclude, it's not reasonable for our service to reach an outcome.
- It is entitled to rely on R3(1) (c) under the CRM Code.
- This service is not party to all the whole facts, and it is not safe not reasonable to

make conclusions based on the balance of probabilities.

- The criminal investigation must be considered in order to reach a conclusion based on the actual facts whether there was an intent to scam from the outset.
- Reaching a conclusion may prejudice any future criminal proceedings.
- The bank provided effective warnings when Mr B made the payment.

As the case could not be resolved informally, it's been passed to me for a 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 I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision 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.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. HSBC was a signatory to the CRM Code at the time the payment in question in this case was made.

Is it appropriate to determine this complaint now?

HSBC says it couldn't give Mr B an answer on his claim, and that our service can't fairly reach an outcome, due to ongoing investigations into V and its affiliated companies. Under the CRM Code HSBC could defer giving an answer on a CRM complaint in accordance with R3 (1)(c), which 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."*

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA (Financial Conduct Authority) investigation is 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 – as explained above – is the balance of probabilities).

The Lending Standards Board has said pointed out that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So in order to determine Mr B'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 Mr B 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 Mr B first raised his claim with HSBC on 27 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 Mr B 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 Mr B 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 outcome of the FCA investigation for me fairly to reach a decision on whether HSBC should reimburse Mr B under the provisions of the CRM Code.

Has Mr B been the victim of an APP scam, as defined in the CRM Code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

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 wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it is met.

An “APP scam” is defined in the Definitions and Scope section of the CRM Code:

“Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.”*

I’ve considered the first part of the definition, and having done so I’m satisfied that Mr B paid the account he was intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr B’s transaction.

I’ve gone on to consider if Mr B’s intended purpose for the payment was legitimate, whether the intended purposes he and J (acting on behalf of V) were broadly aligned and, if not, whether this was the result of dishonest deception on the part of V.

From what I’ve seen and what Mr B has told us, I’m satisfied Mr B made the payment with the intention of investing in V. He paid J on behalf of V as J was one of V’s ‘fund directors’. And I haven’t seen anything to suggest that Mr B didn’t think this was legitimate.

I’ve considered whether there is convincing evidence to demonstrate that V’s intentions with Mr B’s funds was significantly different to this, and so whether this was a scam or genuine investment.

But I think the evidence I’ve seen suggests V didn’t intend to act in line with the purpose for the payments it had agreed with Mr B.

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

- V claimed to be regulated by the CSSF (Commission de Surveillance du Secteur Financier) and that it was pending regulation from the FCA. However, both the CSSF and FCA have said this isn’t true. Even after the FCA’s intervention in April 2023, V still made claims to investors that it was with the CSSF, which also wasn’t true.
- There is no evidence to substantiate V’s claims around the profits they say they were able to generate via Forex trading.
- Investors were told that their funds would be immediately moved to a trading account and used for Forex trading. Of the money that was sent to J and another party, less than half appears to have been potentially used for the intended purpose. Also, funds weren’t separated from the personal funds of J.
- V’s account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with a trading exchange and that it was regulated.
- There is also evidence that none of the funds sent to V’s business accounts was used for the intended purpose of trading in Forex.

Considering all of the above, I do not think V was using investor funds, such as Mr B's £5,000, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

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. In regard to the FCA's investigations, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is Mr B entitled to reimbursement under the CRM Code?

There are two exceptions to reimbursement to consider here:

- Mr B ignored an 'Effective Warning'
- Mr B made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.

The Code also says that the assessment of whether these matters can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Did Mr B ignore an effective warning?

In its submission I note that HSBC says the payment Mr B made generated a warning based on the payment purpose he selected. Mr B selected 'investments'. The warning stated:

Caution this could be a scam

Warning if someone has told you to mislead us about the reason for your payment and choose the wrong payment type stop. This is a scam.

Fraudsters can offer what appear to be genuine investment opportunities and may pressure you to invest your savings or transfer your current pension to a new scheme.

What you need to do before making the payment

Do not proceed if you have been cold called offered guaranteed returns or if you are feeling pressured.

Check if the company is genuine and authorised by the Financial Conduct Authority [FCA]. If they are not registered take time to talk to an independent adviser before proceeding.

Check that the company you are dealing with is not listed on the cloned firms page on the FCA website.

Check that the person you have been in contact with is a genuine representative of their company.

For cryptocurrency investments make sure you're making the payment directly to the provider and the online wallet is in your name and only you have access to it.

If you're unsure take time to talk to an independent advisor.

Visit our fraud centre for further guidance on how to undertake the required checks before proceeding.

I don't think this warning is effective. It attempts to cover off too many different investment scams and fails to bring them to life. There's a lot of text and it begins with whether the consumer has been told to mislead the bank. Mr B was making an investment and hadn't misled HSBC about the payment purpose and he wasn't transferring a pension. So it may not have appeared relevant to him. Furthermore, I don't think carrying out the checks listed would have revealed this as a scam at the time.

I don't find that Mr B ignored an effective warning. In any event, I'm not convinced a better warning would have made a difference in this scenario anyway given the sophistication of this particular scam and so the effective warning exception cannot be fairly applied.

Did Mr B have a reasonable basis for belief?

I have also considered whether Mr B had a reasonable basis for believing V was legitimate and was providing a genuine investment product. In doing so, I have considered Mr B's comments that he was invited to attend a conference where he met the fund managers, who were knowledgeable and professional. Mr B said he came across other investors who had been receiving returns, and were continuing to invest, which reassured him.

Mr B was asked to sign a contract with who he believed to be his fund manager, and he was asked to provide photographic identification as part of the setup process for his account, as you'd expect when making a genuine investment. So I can therefore understand why he felt the investment was genuine.

This was a sophisticated scam, with lots of similarities to a genuine investment of this nature. The documentation included a risk disclosure similar to a genuine investment. There was nothing in the public domain at the time about V or its associates that Mr B could've reasonably inferred from that a scam was taking place in an otherwise plausible set of circumstances. Given HSBC's strength of feeling that this remains a genuine investment - it's difficult to see how - at the time Mr B made the payment - there was anything about the investment that should have caused him concern.

On balance, I think there was enough to reasonably convince Mr B that this was a genuine investment he could trust. He had been introduced to it by L who told him V was regulated.

With this in mind, I don't think Mr B made the payments without a reasonable basis for belief that V and the investment itself was genuine. I therefore do not think HSBC can apply an exception to the reimbursement under the CRM Code, so it should reimburse Mr B in full.

Putting things right

In order to put things right for Mr B, HSBC UK Bank Plc must reimburse Mr B the £5,000 in full.

It should also apply 8% simple interest on the sum above from the date of the Investigator's view to the date of settlement.

I say this because the information our service has relied upon to uphold Mr B's complaint was not readily available to HSBC when the scam claim was first raised. So, they would not have been able to identify the issues that led to the complaint eventually being upheld.

As there is an ongoing investigation, it's possible Mr B may recover some further funds in the future. In order 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 in respect of this £5,000 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 B for his consideration and agreement.

My final decision

My final decision is that I uphold this complaint in full and I require HSBC UK Bank Plc to put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 July 2025.

Kathryn Milne
Ombudsman