DRN-5313494

Financial Ombudsman Service

The complaint

D complains HSBC UK Bank Plc won't reimburse £25,500 it lost to an investment opportunity that it now considers to be an Authorised Push Payment (APP) scam.

While this complaint concerns D's complaint and loss of funds, throughout this decision I will refer to D's director, Mr D who carried out the payment on D's behalf.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In March 2023 Mr D learned about an investment opportunity with a company, which I'll refer to as 'V', from a friend who added him to messaging group for forex investors. Mr D said he was sent recordings of webinars and online Q&As about the investment, which he found persuasive. He also checked the company's online presence, including available reviews and previous fund results.

On 25 March 2023, Mr D transferred £25,000 from D's HSBC current account, across two payments £500 and £24,5000, to V. On 27 March 2023, he received email confirmation that his funds had cleared and had been deposited into V's FCA regulated broker's account.
Mr D has explained that he intended to invest a further £50,000. While an initial transfer of £500 left D's account, a second payment of £49,500 was returned to the account.

In June 2023, the Financial Conduct Authority ('FCA') published a warning that V was operating without authorisation. At which point Mr D believed he'd been scammed.
With the support of a professional representative, Mr D contacted HSBC to seek reimbursement of the funds lost to the scam. HSBC confirmed it had contacted the beneficiary bank to see if any funds could be recovered, but that it would require more information from Mr D to complete an APP scam investigation.

Dissatisfied with HSBC's response, Mr D referred the complaint to the Financial Ombudsman. Our Investigator upheld the complaint. She was persuaded, on balance, the available evidence demonstrated that V was operating a scam and Mr D had a reasonable basis for believing the investment to be legitimate, as such HSBC was required to reimburse D in full, plus 8% simple interest.

Mr D accepted our Investigator's opinion. HSBC disagreed. It considered it was premature to conclude V was operating a scam. It noted that law enforcement was continuing to investigate, and no charges had yet been brought against any individuals associated with V. It also said available evidence suggested that some trading may have been ongoing through another company associated with V, which could mean investors funds were still held, which meant it was not possible to determine if there was an intent to scam.

The complaint has now been passed to me to decide.

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 this complaint for largely the same reasons as our Investigator. I'll explain why.

When considering what is 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 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 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had 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 payments in dispute were made.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam. Under the CRM Code, an APP scam is defined as:

> *"…a transfer of funds…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."*

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

> *"DS2(2) This code does not apply to:*
> *(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

This makes it clear that *"private civil disputes"* between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

But that doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases. So, I would need to see evidence that convinces me it's more likely than not that a criminal fraud has occurred, and therefore that D lost money to an APP scam. If I do find that is the case, then the CRM Code would apply, and D would be entitled to reimbursement

of its losses unless HSBC could show that any of the exceptions to reimbursement set out in the code apply.

Can HSBC delay making a decision under the CRM Code?

The CRM Code says firms should decide whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be delayed. If the case is subject to investigation by a statutory body and the outcome of that investigation might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

To date HSBC has not provided either Mr D or the Financial Ombudsman with an answer to D's scam claim, and it has asked that the Financial Ombudsman await the outcome of the law enforcement investigations before reaching a decision. Therefore, while HSBC has not expressly stated as much, it appears to be relying on R3(1)(c) to account for its delay in providing an answer to the scam claim. But whether R3(1)(c) applies or not, this does not impact D's right to refer a complaint to the Financial Ombudsman. Nor does it impact the Financial Ombudsman's ability to provide an outcome if we consider we have sufficient evidence to reach a fair and reasonable outcome.

Is it appropriate to determine D's complaint now?

I understand that an FCA investigation into V is still on-going. So, I have considered whether it would be appropriate to delay my decision as a result of the ongoing investigation – in the interests of fairness.

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 based on evidence already available. And it may be that investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine D'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 D 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 D first raised its claim with HSBC in April 2024, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving D an answer for an unspecified length of time would be appropriate unless truly justified. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware the above processes involved with the FCA investigation might result in some recoveries for V's investors. 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 D under those processes in respect of its £25,500 investment before paying anything I might award to it on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether HSBC should reimburse D under the provisions of the CRM Code.

Has D 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 (which includes micro-enterprises such as D) who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam is met (DS1(2)(a)), as set out above. The CRM Code doesn't apply to private civil disputes. So, the CRM Code wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that D's funds were transferred to the intended recipients, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, for there to have been an APP scam, D must have transferred funds to V (or persons associated with V) for what it believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received personally by the founding individuals at V did end up with a legitimate forex platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the forex platform.

However, from evidence gathered from other complaints considered by the Financial Ombudsman Service, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of forex trading. Whereas investors were assured all funds would be immediately moved to an FCA regulated trading account to be used in forex trading. But this didn't happen.
- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via forex trading.
- The returns from the forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't

profits made from investing.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that D wasn't involved in a failed investment but a scam. As such, I consider the CRM Code applies.

Is D entitled to a refund under the CRM Code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam, like D. But a firm may choose not to reimburse a customer if it can establish that one or more of the exceptions to reimbursement apply (R2(1)).

As HSBC has not yet answered D's scam claim, it is unclear if it considers any of the exceptions to reimbursement apply. I have therefore considered whether I think it's more likely than not HSBC could fairly rely on any of the exceptions in this case.

HSBC has not provided any evidence to suggest that it intervened in any of D's payments to V, or offered it any scam warnings – nor would I have expected it to given the previous account activity. So, I can't see HSBC could refuse a reimbursement on the basis that Mr D, on behalf of D, ignored an Effective Warning (R2(1)(a)). And considering the circumstances of this case, I consider the only potentially relevant exception is whether Mr D made the payments without 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

Did Mr D have a reasonable basis for belief?

I have considered whether Mr D had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration to how Mr D was introduced to V, alongside the overall sophistication of this scam.

Mr D was introduced to V by a friend who added him to a group chat concerning forex investments. Mr D was familiar with other members in the group and believed the referral was genuine and reliable.

I consider the sophisticated set up of the scam would also have been compelling – Mr D was provided with links to webinars and meetings that V had conducted with investors, which included details of the results they claimed to have achieved. Mr D was also aware that V had held face-to-face meetings with investors and appeared to have a proven track record. The account opening process followed a similar pattern to what you would expect from a legitimate firm; and V's website and the client portal, which provided the ability to track his supposed investment, appeared professional and legitimate. In the circumstances I can understand why Mr D felt the investment was a genuine one at the time.
I must also take into account that an FCA investigation is ongoing, and HSBC does not consider there is sufficient evidence available to determine that V was operating a scam. In this scenario, I think it would be unlikely to conclude that Mr D therefore didn't have a reasonable basis to believe the investment was legitimate at the time.

On balance, I think there was enough to reasonably convince Mr D at the time that this was a genuine investment company. With this in mind, I don't think he made the payments without a reasonable basis of belief that V and the investment itself was genuine.
With this in mind, I don't think HSBC has established that any of the exceptions to reimbursement under the CRM Code apply here. It follows that it should refund the money D lost in full.

Could HSBC have otherwise prevented D's loss?

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by HSBC at the time of the payments would have positively impacted Mr D's decision-making. As touched on above, I don't think either party would have likely uncovered sufficient cause for concern about V such that Mr D would have chosen not to proceed.

Putting things right

I've thought carefully about whether interest should be added to the refund D is due from HSBC. I'm aware that much of the evidence that I have relied on, specifically the beneficiary account statements, only became available because of the investigation carried out by the Financial Ombudsman Service. This information was therefore not available to HSBC when it was asked to consider D's scam claim. The evidence was however summarised to HSBC in our Investigator's initial view, which was sent on 29 January 2025.

In the circumstances, I think HSBC ought to have settled D's claim within 15 business days of the date of our Investigator's view.

As an investigation into V is ongoing, it's possible D 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 which may become available through the ongoing investigation in respect of this £25,500 investment before paying the award. If HSBC elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to D for its consideration and agreement.

My final decision

I uphold this complaint and direct HSBC UK Bank Plc to:

- refund D the disputed payments totaling £25,500 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from 19 February 2025 (15 business days after our Investigator's view setting out why the complaint should be upheld).

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 16 October 2025.

Lisa De Noronha
Ombudsman