

## **The complaint**

Miss D is unhappy HSBC UK Bank Plc won't reimburse money she lost to a scam.

## **What happened**

The investigator has set out the background to this complaint in some detail and it does not appear to be in dispute. I've briefly outlined Miss D's testimony:

- In late 2022 Miss D's friend of over five years told her she'd been investing in a 'hedge fund' ("V") and was making a healthy profit.
- At the time, Miss D was grieving the loss of a close relative and trying to start her own business.
- V was associated with two individuals – Mr C and Mr R. A limited company, which only Mr C was a director of, was set up in January 2023.
- The friend showed her an account balance on V's application which appeared to demonstrate this success.
- She waited several months before deciding to invest and couldn't find any negative information online about V.
- By January 2023, Miss D's friend said she'd been able to withdraw funds from V.
- Miss D contacted V and was told that her money would be traded on the foreign exchange market but she wouldn't be able to withdraw any money for three months.
- After going through various identity checks, Miss D made two payments to V, totaling £50,000, on successive days in late February 2023.
- In April 2023, Miss D says she recommended the investment to another friend. The friend worked in finance and found a warning about V that had been published by the Financial Conduct Authority ("FCA") earlier that month

Miss D reported the matter to HSBC in May 2023. It initially declined to reimburse her, but later, in November 2023 it explained that it was waiting on industry guidance to decide whether V was operating as a scam or not.

Miss D referred the matter to our service and one of our investigators upheld her complaint in full. Miss D accepted our investigator's recommendations. HSBC did not. It said that it was 'completely unclear' whether V was operating as a scam and that any decision in that regard was premature. It also suggested that some of Miss D's funds might still be being held by a company connected to V. It argued that any decision shouldn't be made until law enforcement had reached a decision to charge the directors of V.

As no agreement could be reached, the case was passed 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.

HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). It requires firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. HSBC appears to be relying on 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 have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that an 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 aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Miss 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 Miss 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 Miss D first raised her claim with HSBC at least as early as May 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 Miss D 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 Miss D 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 ongoing FCA investigation for me fairly to reach a decision on whether HSBC should reimburse Miss D under the provisions of the CRM Code.

In order to reach a decision on whether V was operating as a scam, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

*"...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."*

DS2(2)(b) explains that the CRM Code does not apply to:

*“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”*

Of particular relevance here is whether Miss D transferred funds to V for what she believed to be a legitimate purpose but which was, in fact, fraudulent.

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, including Miss D, 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 by Mr C and Mr R (though not the limited company V) did end up with a genuine FCA authorised foreign exchange platform.

However, 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.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- Less than half of the funds sent to Mr R and Mr C was potentially used for the intended purpose of Forex trading. Whereas Miss D sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading, as she was told in an e-mail following her investment.
- 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.
- We have also seen evidence that none of the funds sent to V's business accounts was used for the intended purpose of trading in Forex.

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 Miss D wasn't involved in a failed investment but a 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. There is no certainty that any prosecutions will result from the FCA's investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So I've gone on to consider whether HSBC can fairly decline reimbursement under the provisions of the CRM Code. It can do so by demonstrating that one or more exception to reimbursement applies. In this case, it has referenced two:

- Miss D 'ignored Effective Warnings' given by it; and
- She made the payments without a reasonable basis for believing that the payee was legitimate.

Our investigator explained why they didn't think either exception applied. HSBC hasn't provided any further submissions about this, so I'll only address these points briefly:

- Miss D was told by the fraudsters to indicate to HSBC that the payments were for goods and services. She did that and received a written warning relevant to purchase scams. While the warning contained some relevant information (such as recommending carrying out research and being wary of offers that seem too good to be true) I don't consider these warnings to be Effective.
- The main focus of the warnings was (understandably) purchase scams, rather than investment scams, so the advice wasn't tailored to the specific scam risk. Much of the information wasn't relevant to Miss D's circumstances. Miss D could have picked a more relevant payment reason, but the fact she didn't doesn't allow me to conclude that she ignored an Effective Warning because she did not receive one.
- I've thought about whether Miss D's basis for believing that V was legitimate was reasonable and I'm satisfied it was. Miss D says she was introduced to the investment by a friend who had successfully withdrawn money from the scheme prior to Miss D's payment. Miss D hasn't provided evidence of this (and says that, out of shame and embarrassment, she hasn't spoken to her friend since losing her money). However, her testimony is consistent with other victims of the scam and I've seen evidence that other people were able to successfully withdraw some money from the scheme. So I've no reason to doubt what she's said. I think that being introduced to the scheme by a friend would have been a powerful factor in her decision making. I also note that she was initially cautious, asked questions of the scheme operators, and waited for some time before investing. And, at the time she made the payments there seems to have been little information in the public domain that would have suggested V was operating as a scam.
- I have taken into account that some of the returns that V suggested it could make were very high, but I can see from V's marketing material, as well as its communications with investors that it did not guarantee such returns.
- I think this scam had some features which made it very compelling, both for Miss D and other victims of the scam. I think those features outweigh the concerns that Miss D perhaps ought to have had about the returns being claimed. Overall, I think Miss D had a reasonable basis for believing that the investment was legitimate.

I'm satisfied that neither exception to reimbursement applies and HSBC should reimburse Miss D under the provisions of the CRM Code. It should also pay 8% simple interest on each payment. I think it should pay interest from the date our investigator gave their view of the complaint (11 December 2024) – the point at which important information about the beneficiary accounts was disclosed to HSBC – to the date of settlement. This award of interest is different to that recommended by our investigator. Both parties were contacted about this change prior to my final decision but provided no further comment.

### **My final decision**

I uphold this complaint about HSBC UK Bank Plc and instruct it to pay Miss D:

- £50,000
- 8% simple interest on that amount from 11 December 2024 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 27 June 2025.

Rich Drury

**Ombudsman**