

The complaint

Miss L complains that HSBC UK Bank Plc ('HSBC') won't refund the money that she lost after falling victim to a scam.

What happened

In 2022, Miss L's partner received an email about an investment opportunity. The opportunity was presented to them by someone I'll refer to as S. The investment would be made through a company I'll refer to as V and involved trading.

Miss L says she did research before deciding to invest which included:

- Checks on S, who was authorised and regulated by the FCA.
- Attended online seminars and talked to other investors who were happy with their investments through V.
- Checks on the directors of V, including reviewing their online profiles.
- Checks on the broker associated with the investment who was FCA regulated.
- Reviewed presentations, pitch decks and V's website.
- V said it was regulated by the CSSF and had pending FCA approval. Miss L contacted both organisations, to check that was correct, but was told they couldn't give her any information under data protection laws.

Miss L made two payments from her HSBC account in August 2022, each for £5,000. The payee on these payments, I'll refer to as J.

Miss L became aware it was a scam when she later tried to withdraw her investments and couldn't. So, she reported the scam to HSBC in June 2023.

HSBC didn't give Miss L a response on her claim. They've told our service that as there are ongoing investigations by external organisations, they're unable to reach an answer on whether Miss L was the victim of a scam and whether she is entitled to a refund.

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

An investigator looked into Miss L's complaint and recommended that HSBC refund her in full. The investigator felt there was sufficient evidence to reach an answer on Miss L's complaint under the Contingent Reimbursement Model Code (CRM Code), and that the evidence supported that it was unlikely Miss L's funds were used for their intended purpose and that they had been obtained by dishonest deception, so her claim is covered by the CRM Code. The investigator also wasn't satisfied that HSBC could rely on an exception to reimbursement under the CRM Code.

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

- There is potentially trading still going on albeit through an affiliate company of V's, so it's possible that Miss L's funds are still being held.
- It's unclear whether there was an intent to scam Miss L.
- 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.

In their view, the investigator had recommended that interest be paid on the refund and calculated from the date HSBC declined Miss L's fraud claim until the date of settlement. The investigator got in touch with Miss L and HSBC and clarified that the interest should be calculated from the date of their view until the date of settlement.

Miss L disagreed with this change to the calculation of the interest, saying another bank had refunded her and calculated interest from the date of the payments. Miss L feels this is a fairer date to use as it reflects the true impact she experienced in waiting to get her refund.

As the case couldn't be resolved informally, it was passed to me to 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank such as HSBC are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police 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).

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.

In order to determine Miss L'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 L 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 L first raised her claim with HSBC in June 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 L 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 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 Miss L 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 police investigation to conclude for me fairly to reach a decision on whether HSBC should reimburse Miss L under the provisions of the CRM Code.

Are Miss L's payments covered by the CRM Code?

HSBC have signed up to the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, for example 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.

The CRM Code defines what is considered an APP scam as, *"where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent"*.

In order to decide whether the circumstances under which Miss L made her payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Miss L thought this purpose was legitimate.
- The purpose J or V had in mind at the time of the payments and whether this was broadly in line with what Miss L understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Miss L was making payments to J as part of an investment with V. I haven't seen anything that suggests Miss L didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose V and J had in mind and whether it was in line with what Miss L thought.

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

- V claimed to be regulated by the CSSF and have regulation pending 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.
- The rates of returns that V promised were unsubstantiated. There is no evidence available that supports V trading successfully or generating the profits that it claimed it was making.
- 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, investors funds weren't separated from the personal funds of J.
- Of the funds paid to V, less than 12% was returned to investors. Some investors did receive funds, but funds were also sent to J and other personal accounts and used for what appeared to be non-trading purposes.

Based on this, I'm satisfied that it's more likely than not Miss L's funds weren't used for their intended purpose and that it's more likely than not V and J obtained the funds through dishonest deception. So, I'm satisfied that Miss L's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Miss L is entitled to a full refund unless HSBC can establish that an exception to reimbursement applies.

So, I've gone to consider whether HSBC can fairly rely on either of these exceptions to reimbursement.

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

- 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 service; and/or the person or business with whom they transacted was legitimate.

- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

* There are further exceptions outlined in the CRM Code, but they don't apply to this case.

Did Miss L have a reasonable basis for believing the investment was genuine?

I'm satisfied that Miss L did have a reasonable basis for believing the investment was genuine for the following reasons:

- Miss L's partner had an existing relationship with S, as a previous client of hers. S introduced the investment as being offered by V who she said had pending FCA regulation and was regulated by the CSSF. Miss L was also provided with detailed documentation about the investment, pitch decks and FAQs. All of which suggested to her that it was a legitimate investment.
- S was regulated by the FCA, which also gave Miss L confidence.
- Miss L attended a seminar, which was also attended by existing investors. Miss L said she talked to some of those investors, who all promoted the investment.
- While Miss L made her payments to J, she received these bank details from V's investment portal. She also checked with S about paying J, who said it was standard practice. As Miss L had done checks on J previously and he'd been present at the seminar she attended, Miss L didn't see this as a concern.
- While the returns promised by V of 10.9% per month seemed high, Miss L says they weren't out of line with other investments that she'd seen. Also, her partner had previously invested in Forex and wasn't concerned.

Based on the extensive checks that Miss L had completed, the information she had been given about the investment and knowing that it was being offered to her by someone who was FCA regulated, I'm satisfied that Miss L had a reasonable basis for believing the investment was genuine. So, I'm not satisfied that HSBC can rely on this exception to reimbursement.

Did Miss L ignore an effective warning given by HSBC?

HSBC say Miss L was shown a warning when she made the first payment of £5,000. The warning said:

"Caution – this could be a scam.

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."

The warning then went on to say Miss L should be concerned if she had been cold called, offered guaranteed returns or she was being pressured to invest. It was recommended that Miss L check the FCA website to ensure the company was authorised, and if they weren't, to talk to an independent advisor before making the payment. Also to check that the person who contacted her was a genuine representative of the company.

In this case, I'm not satisfied that HSBC can say that Miss L ignored an effective warning by failing to take appropriate action in response. I say this because:

- Miss L had tried to check V's pending FCA authorisation and their CSSF authorisation. She also checked and knew that S was FCA regulated.

- The investment wasn't introduced in a cold call, it was an investment referral by someone who Miss L and her partner regularly received contact from and who was legitimately involved in investments.
- Also, Miss L believed she was talking to someone who was a genuine representative of the company based on the seminar and zoom calls she had in relation to the investment. She also believed she was talking to someone who was an independent advisor as S wasn't directly involved or employed by V. Rather she was recommending an investment as part of her role as an introducer.

So, I'm not satisfied that HSBC can rely on this exception to reimbursement either. On that basis, Miss L is entitled to a full refund of the £10,000.

The interest award

HSBC never declined Miss L's claim under the CRM Code, they just didn't give her an answer.

As part of our investigation, we obtained information which enabled us to reach our answer under the CRM Code, which was set out in the investigator's view. As HSBC weren't aware of that information until they received the view, I'm satisfied that it's fair for them to calculate the interest on the refund from the date of the investigator's view (being 6 December 2024) until the date of settlement.

I appreciate that another bank may've calculated interest on a refund they proactively made to Miss L using different dates, but I'm not satisfied that it would be fair to use an earlier date on this case. Also, I can't fairly say HSBC acted unreasonably in not providing Miss L with an answer or refund earlier, based on the information they had available at the time

Putting things right

To put things right, I require HSBC to:

- Refund Miss L in full, being £10,000
- Pay simple interest of 8% per annum on that refund, calculated from the date of the investigator's view (6 December 2024) until the date of settlement*
- In order to avoid the risk of double recovery HSBC is entitled to take, if it wishes, an assignment of the rights to any funds that may be recovered as a result of the court proceedings or ongoing investigations.

*If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss L how much it's taken off. It should also give Miss L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Miss L as set out above.

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

Lisa Lowe
Ombudsman