

The complaint

Miss D complains HSBC UK Bank Plc ('HSBC'), hasn't reimbursed her following an authorised push payment ('APP') investment scam she fell victim to. She says HSBC should reimburse her for the money she lost.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

In late July 2022, Miss D was introduced to an investment company whom I'll refer to as 'V' by a friend whom she'd known for many years. Miss D says her long-term friend was best friends with the partner of one of the founders for V – whom I'll call 'Mr M'. Miss D said her friend had been investing through V and she saw he had made good returns on his investment, and she was interested in investing with V also. Miss D's friend put her in touch with Mr M from V.

Miss D and Mr M liaised about Miss D investing through V. Miss D was reassured by what she was told and also by the supporting materials Mr M provided about V which suggested V was regulated, with Mr M advising that the fund was fully regulated by the top two European licences and the incorporation process for V was underway. Miss D was told that the V was in its early friend and family stages and was growing. Miss D was informed of how much the investments could expect to make and was shown the online platform where investors could track the trades and profits every day.

Believing everything to be legitimate, Miss D transferred £25,000 from her account with HSBC to the personal account of another one of the founders of V – whom I'll call 'Mr R'. Miss D believed Mr R was responsible for V's trading. Miss D was given access to a platform which showed her how her investment was doing. And happy with how things were seemingly progressing, Miss D went on to make further payments to the investment.

In total, Miss D made the following payments to V:

Payment number	Date	Payment type and beneficiary	Amount
1	12/09/2022	Faster payment to Mr R	£25,000
2	07/10/2022	Faster payment to Mr R	£5,000
3	27/10/2022	Faster payment to Mr R	£10,000
4	14/11/2022	Faster payment to Mr R	£10,000
		Total	£50,000

In April 2023, Miss D tried to withdraw funds from her investment but was unable to. Miss D contacted Mr M who advised V was liaising with the Financial Conduct Authority ('FCA') and couldn't trade, and investors couldn't make deposits or withdraw. Over the next few weeks Mr M advised Miss D that V were liaising with the FCA and were showing it what steps V had taken to be regulated. Mr M also advised Miss D that her funds were safe and weren't at risk and that he expected V to be trading again.

Miss D says she contacted the FCA and was told it was carrying out an investigation into V. Ultimately Miss D wasn't able to retrieve any of the funds or profits she thought she had made from V.

Miss D reported the matter to HSBC in February 2024 to try and recover her funds or be reimbursed her loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that HSBC was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Ultimately, HSBC issued its final response to Miss D on 23 February 2024. It advised it was aware of V and was waiting on industry guidance from law enforcement / FCA to confirm that V had an intent to scam investors. It advised it had no timescales as to when it expected an update, but it would keep Miss D updated accordingly. It went on to explain that as it considered it could take no further action at that time, it would close Miss D's complaint down and she could refer the matter to our service also.

One of our Investigators looked into the matter and upheld Miss D's complaint. In short, they explained that they did not think it was fair for HSBC to wait for the FCA's investigation into V to be concluded, before making a reimbursement decision under the CRM Code. Having reviewed the complaint, they felt it was more likely V was operating as a scam – and this was based on a number of factors. They therefore assessed the complaint under the CRM Code and did not think any exceptions to reimbursement applied.

They therefore recommended a full refund of the payments Miss D made totalling £50,000, as well as 8% simple interest from 15 days after Miss D raised her fraud claim with HSBC to the date of settlement.

Miss D accepted the findings, however HSBC did not.

In short HSBC considered:

- there was potentially trading was still going on, through an affiliate company, so there was a possibility that customers / investors funds were still held;
- there was an ongoing investigation by the FCA into V and currently there have been no charges brought against V, or any of its employees, therefore waiting for the outcome of the FCA investigation into V was important.
- If the investigation ultimately concludes there is reasonable grounds to confirm that there was an intent to scam, and from what date, then any funds that may still available could be subject to a confiscation order by the courts and compensation may be due through that process.

Overall, HSBC did not think it could be concluded that V was operating as a scam until the FCA's investigation was concluded and our service should wait until the outcome of that investigation.

As an informal agreement could not be reached, the complaint has been 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.

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 have been good industry practice at the time.

HSBC was a signatory to the CRM Code. It required 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 the 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 or proceedings 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 in February 2024, 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 her 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 to fairly reach a decision on whether HSBC should reimburse Miss D under the provisions of the CRM Code.

In order to reach a decision, 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 legitimate purposes, but which were, 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 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 the founding individuals at V (though not the limited company V) did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex 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.
- 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.
- Less than half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of Forex trading. Whereas Miss D sent funds with the understanding they would immediately be moved to an FCA regulated trading account to be used in Forex trading, as Miss D understood her agreement with V to be. 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 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, as I'm satisfied Miss D has most likely been the victim of an APP scam, I've considered whether she should be reimbursed or not under the CRM Code.

Is Miss D entitled to reimbursement under the CRM Code?

I've considered whether HSBC should reimburse Miss D under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Miss D made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.
- Miss D ignored what the CRM Code deems to be an 'Effective Warning'

And importantly, when assessing whether it can establish these things, HSBC must consider whether they would have had a 'material effect on preventing the APP scam'.

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

In doing so, I have carefully considered how Miss D was introduced to V. I consider this to be an important factor when determining whether Miss D held a reasonable basis of belief that V was legitimate at the time she made payments to it.

Miss D was introduced to V by her long-term friend and this was someone who had already been investing with V. And Miss D's friend was also friends with Mr M's partner. And Mr M was one of the founders of V. So, I can understand, after being introduced to one of the founders of M and then receiving the supporting / promotional materials about V and hearing first-hand about V by Mr M and being given reassurances by him about V being regulated, coupled with her long-term friend having already invested and made returns, why it would have seemed genuine investment company to Miss D.

When I consider how Miss D was introduced to V (liaising with Mr M who was one of the founders of V) and when I think about the sophistication of this scam, with things such as the promotional material, the account opening process, V's website, the client portal and the ability to track supposed investments, I can further understand why Miss D felt the investment was a genuine one at the time.

I accept some of the claims made by V about the returns it could generate seem unlikely. Miss D was advised by Mr M that £50,000 would earn £9,000 in a month – so approximately 17-18% profit. And then she was told where those projections could see her investment later down the line. But, and importantly, alongside this I also have to weigh up what Miss D had been told about V by others, and what she had seen others seemingly get back in returns. There were sophisticated aspects of the scam, particularly with Miss D liaising with one of V's founders and receiving reassurance about the investment being safe and regulated. This, alongside the literature and marketing she received and the ability to see how her investments were performing on a daily basis on V's platform and coupled with the evidence that Miss D says she saw of the returns her long-term friend had made (which is consistent with other victim's testimony), to my mind outweighs the concerns that Miss D perhaps ought to have had about the returns being claimed.

On balance, I think there was enough to reasonably convince Miss D at the time that this was a genuine investment company. With this in mind, I don't think Miss D made the payments without a reasonable basis of belief that V and the investment itself was genuine.

I have also considered whether HSBC can rely on the exception to reimbursement that Miss D ignored what the CRM Code deems to be an 'Effective Warning'. HSBC says Miss D was provided with a warning when she made the first payment for £25,000. And it hasn't evidenced that a warning was provided in relation to the other payments Miss D made. As HSBC has not provided any evidence that it warned Miss D for payments 2, 3 and 4 before she went ahead with the payments, it cannot demonstrate she ignored any 'Effective Warnings' and therefore cannot rely on that exception to reimbursement for those payments.

For the warning HSBC did provide for the first payment, it says Miss D chose 'friends and family' as the payment purpose – and that was the warning it therefore provided. I don't think the warning provided is an effective warning as defined by the CRM Code. It doesn't speak to the scam Miss D was falling victim to, so it wouldn't have been impactful here.

I appreciate Miss D didn't choose the relevant payment purpose when making the payments. But Miss D was told that the investment was in its friends and family stage – so I don't think it was so unreasonable that Miss D selected this payment purpose when making the payment.

I am also mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here Miss D had no reason to believe that V wasn't a genuine investment company at the time. So even if had Miss D selected a more accurate payment purpose or even if HSBC were to have provided a more relevant or tailored warning to Miss D about investment scams – I think it is fair to say it wouldn't have had a material effect on preventing the scam such was her belief in V and that things were legitimate. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Overall, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Miss D was more likely than not the victim of an APP scam. And her fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied HSBC should reimburse Miss D under the provisions of the CRM Code. And HSBC is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Miss D under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view of this complaint (22 January 2025). I'm satisfied that the information disclosed in that view was sufficient for HSBC to conclude that Miss D had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. This has been explained to Miss D who agrees.

Putting things right

I uphold this complaint. HSBC UK Bank Plc should pay Miss D:

- £50,000 she lost to the scam orchestrated by V; and
- 8% simple interest on that amount from 22 January 2025 to the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 July 2025.

Matthew Horner
Ombudsman