DRN-5345913

Complaint

Mr M is unhappy that HSBC UK Bank Plc didn't reimburse him after he reported that he was victim of a scam.

Background

The background to this case is well known to both parties, so I will only summarise the key facts here.

In March 2022, Mr M invested a significant sum with a business I will refer to as Company A. Company A claimed it would manage investor funds and deliver generous returns through a range of strategies, including foreign exchange trading. Mr M first became aware of Company A in December 2021 when it was recommended by his son. Other members of his family had also invested, and their apparent success persuaded Mr M to do likewise.

Using his HSBC account, he made the following payments to Company A:

- 18 March 2022 – £25,000
- 19 March 2022 – £25,000
- 1 August 2022 – £25,000
- 2 August 2022 – £25,000
- 3 August 2022 – £10,000

In June 2023, Mr M discovered that Company A had ceased trading. He concluded that he had likely fallen victim to a scam and reported the matter to HSBC. HSBC declined to refund him. It said that it did not accept that Mr M had been the victim of an investment scam. Instead, HSBC though this might be a private civil dispute. At the very least, it believed the question of whether Company A was a scam remained unresolved and that we should wait for the outcome of official investigations before making a finding.

Mr M disagreed and referred his complaint to this service. An Investigator reviewed the case and upheld the complaint in full. HSBC did not accept the Investigator's findings, so the complaint has been passed to me for a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that HSBC is expected to process payments and withdrawals that Mr M authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of Mr M's account. However, where Mr M made payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for HSBC to reimburse him even though he authorised them.

HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the Code where they have been the victim of an authorised push payment (APP) scam, as defined in the Code.

Can HSBC delay making a decision under the CRM Code?

HSBC has argued that the payments Mr M made are the subject of an ongoing investigation and it is inappropriate to conclude whether he is the victim of a scam before the conclusion of that investigation. I've considered its argument on that point carefully, but I don't agree.

The CRM Code says firms should make a decision as to whether to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

I've 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 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 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. Even if a prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown Prosecution Service would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

To determine Mr M's complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that he 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 M first raised his claim with HSBC in late 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 Mr M 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 also aware that these processes might result in some recoveries for Company A'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 Mr M under those processes in respect of this investment before paying anything I might award to him on this complaint.

For reasons I'll explain in more detail 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 M under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with Company A were dishonestly deceived about the purpose of the payments they were making and that Mr M was the victim of a scam.

Has Mr M been the victim of a scam, as defined in the CRM Code?

The relevant definition of a scam from the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent. 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.

To decide whether this definition has been met, I need to consider whether the purpose for which Mr M made the payment was legitimate and whether there was alignment between his purpose in making the payment and Company A's purpose in procuring it. Finally, if those purposes weren't aligned, was that the result of dishonest deception on the part of the company?

I'm satisfied Mr M made the payment here with the intention of investing with Company A. I think he thought his funds would be used to trade in foreign currency, and that he would receive returns on his investment. I haven't seen anything to suggest that Mr M didn't think this was legitimate.

However, the evidence I've seen suggests the company didn't intend to act in line with the purpose for the payments it had agreed with him. The company needed to be regulated by the UK financial regulator, the FCA, to operate an investment of this type within the UK. Mr M says he was told the trading company was regulated by the financial regulator in Luxembourg, the CSSF, and was in the process of becoming regulated by the FCA. And from what I've seen of the marketing material potential investors were shown, the trading company said on a number of occasions that it either was, or was in the process of becoming, regulated by the CSSF. But the CSSF has confirmed it was not in contact with the trading company, and the company was not supervised by it. So this strongly suggests the trading company was dishonestly misleading investors about its regulatory status.

In March and April 2023 respectively, both the CSSF and the FCA issued warnings about the trading company. The CSSF warned that the company was pretending to be registered and supervised by it, but that this wasn't the case. The FCA warned that all companies must be authorised by it if they offer, promote or sell financial products in the UK, but the trading company was not authorised and was targeting people in the UK.

In a number of its emails to Mr M, and in its marketing materials, the trading company also claimed to be partnered with an FCA-regulated broker it held a trading account with. But this broker has confirmed that it doesn't have any relationship with the trading company, or with either of the individuals involved in running the company. So, as Company A told investors their funds were immediately transferred to trading accounts with this broker, this strongly suggests it was dishonestly deceiving investors about the payments they were making. Funds sent to the trading company weren't used for the specific purpose of trading in foreign exchange via the regulated broker – which is what investors thought was happening with their funds.

While some funds sent to the trading company were sent to another foreign exchange trading platform, those funds weren't held and traded on a platform that was regulated in the UK by the FCA, as investors were told their funds would be. The funds sent to this other trading platform also didn't benefit from FSCS protection – as investors were also led to believe. And it is impossible to say whether any trading the company carried out on this other platform was done on behalf of investors, or was solely for the benefit of the trading company itself.

Investors in the trading company were also told all the funds they sent to the company would be immediately moved to the FCA-regulated broker and available for trading. However, from what I've seen of the accounts the funds were sent to, no funds were sent to the FCA-regulated broker the trading company mentioned and only around 60% of the funds were

sent to the other trading platform. This means a significant proportion of the funds the trading company received weren't used for trading in foreign exchange – contrary to what investors were told.

The funds that weren't used for trading in foreign exchange appear to have been used for a number of other purposes, including transfers to other accounts held by individuals involved in running the trading company and their family members, credit card repayments, luxury vehicle purchases, flights, hotels, and gambling. These purposes don't appear to be connected to the trading investors were told their funds would be used for.

Of the funds that were sent to the other trading platform, the trading company only appears to have withdrawn around a third of the amount that was then paid to investors as returns. This raises significant questions about how the remaining returns that were paid to investors were funded, and I think strongly suggests deposits from later investors were being used to pay returns and withdrawals of earlier investors. Some of the funds received into the trading company's accounts from investors were also sent to a cryptocurrency exchange – which is not in line with what investors were told their funds would be used for.

Overall, I think the available evidence shows the trading company wasn't acting in line with the features of the investment it had led Mr M to believe he was making. The purpose for which the company procured that payment wasn't aligned with the purpose Mr M intended for it. Given the incorrect information given out by the trading company, particularly about its regulatory status and its relationship with the broker, I also think the discrepancy in the alignment of the payment purposes between it and Mr M was the result of dishonest deception on the part of the company.

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. As I've explained above, there is significant evidence about the actual activity carried out by the trading company already available. While the FCA's investigation is still ongoing, there is no certainty as to when it will be concluded and what, if any, prosecutions may be brought in future, nor what, if any, new light it would shed on the evidence and issues I've discussed.

In summary, I'm satisfied that the circumstances here meet the definition of a scam set out in the CRM Code.

Should Mr M be reimbursed under the CRM Code?

The CRM Code requires firms to reimburse customers who have been the victim of APP scams, like the one I've explained I'm satisfied Mr M was the victim of, in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies.

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

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that the person or business with whom they transacted was legitimate.

HSBC hasn't provided evidence of any warnings Mr M was shown when he made this

payment or argued that he ignored an effective warning. As a result, I'm satisfied that exception doesn't apply here.

I have also considered whether Mr M acted reasonably when making these payments, or whether there were any warning signs that should reasonably have alerted him that this was not a genuine investment. On balance, I am satisfied that he made the payment with a reasonable basis for believing the investment was legitimate, and I will explain why.

Mr M did not act hastily and evidently exercised some caution. He had been aware of the investment opportunity for a few months before deciding to proceed. During that time, he engaged in several lengthy and detailed conversations with a representative of the trading company, which would have given him confidence in the legitimacy of the offer. I don't know what was said during those calls, but Mr M says that the representative came across as professional and knowledgeable. I don't find that surprising given that the website and promotional material produced by the company was similarly professional and credible in appearance.

Mr M was reassured by the information provided about the company's regulatory status, including the claim that it was regulated by the CSSF, and he accepted the explanation given for the delay in obtaining FCA authorisation.

The investment was also recommended to Mr M by his son, which would naturally have made the opportunity appear more persuasive and trustworthy. There is no evidence to suggest that Mr M was told the returns were guaranteed. While the returns he was earning were generous compared to those typically available to retail investors, they were not presented as risk-free and were supported by ongoing updates and data about the fund's activities. Taking all these factors into account, I am satisfied that Mr M acted in a way that many reasonable people would have done in similar circumstances.

Redress

As there is an ongoing investigation into the trading company by the FCA, it is possible that Mr M may recover some funds in the future through that process. To avoid the risk of double recovery, HSBC is entitled, if it wishes, to take an assignment of Mr M's rights to any future distributions under that process in respect of this investment before paying the award. If HSBC chooses to take an assignment of rights before making payment, it must first provide Mr M with a draft of the assignment for his consideration and agreement.

As Mr M has been deprived of access to his money for some time, I also consider it fair for HSBC to pay interest on the refund. However, much of the information and evidence I have relied on to reach this decision was not available to HSBC when it first assessed Mr M's claim. For that reason, I do not think it would be fair to require HSBC to pay interest from the date it initially responded to his claim. Instead, I consider it fair to require HSBC to pay interest from the date of our investigator's opinion, 29 January 2025, as this is a reasonable point at which the information and evidence necessary to fairly assess Mr M's claim was available.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr M accepts my final decision, HSBC UK Bank Plc needs to refund the payments he made in connection with the scam. It should also add 8% simple interest per annum to those payments calculated to run from 29 January 2025 until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 24 October 2025.

James Kimmitt
Ombudsman