

The complaint

Ms N complains that HSBC UK Bank Plc trading as HSBC UK did not reimburse the money she lost to a scam.

What happened

Ms N was interested in investing and in September 2022 she received an email from a self-help guru she'd had previous dealings with which set out an investment opportunity with a company I'll refer to as 'V'. Ms N was interested in the opportunity and has said she carried out various checks on V and other parties associated with it, as well as attending webinars and zoom meetings with V's representatives. Ms N also received brochures and was aware of other investors who appeared to be having success with their investments. Ms N asked various questions around how V operated and received answers that she felt were satisfactory, so she decided to invest.

Ms N made an initial investment of £5,000, and could see these funds arrive in her account on V's investment portal. Over the following months Ms N received various updates and other information about her investment and so decided to invest more. I've set out the payments she made in the table below:

Ms N does not appear to have received any returns from her investments, nor has her capital been returned to her.

In March 2023, after V was shut down, Ms N contacted HSBC to say she believed she had been scammed. HSBC did not raise a scam claim at that time, Ms N chased this up in 2024 and HSBC said at that time that there was not enough information to say for sure whether V was operating a scam or not, it said it was awaiting guidance from the industry on whether V should be considered as a scam. It did though pay Ms N £150 to recognise that she had received some confusing communications about her claim.

Ms N referred her complaint to our service and our Investigator looked into it. Having reviewed the complaint, they did not feel it was reasonable for HSBC to delay any longer in making a decision on Ms N's complaint, given the evidence that was available by that time. They were also satisfied that Ms N had been the victim of an APP scam. They therefore assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which was in force at the time of the payments Ms N made.

They felt that Ms N had a reasonable basis for believing the investment was genuine, and had not ignored any effective warnings relating to the payments she made, so they did not think an exception to reimbursement applied. They therefore recommended a full refund of the scam payments, as well as 8% simple interest from the date of their view to the date of settlement.

Ms N accepted the findings, however HSBC did not. 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.

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 FCA investigation into V 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 is the balance of probabilities).

In order to determine Ms N'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 Ms N 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 Ms N first raised her claim with HSBC in March 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 Ms N 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 Ms N 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 FCA's investigation, or any criminal investigations that might follow that, for me fairly to reach a decision on whether HSBC should reimburse Ms N under the provisions of the CRM Code.

Has Ms N been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Ms N authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

HSBC was a signatory of the voluntary CRM Code, which provided additional protection to scam victims at the time these payments were made. Under the CRM Code, the starting principle is that a firm should reimburse a customer 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, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...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 explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

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.

I've therefore considered whether the payments Ms N made to V fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to V, which suggest to us it is more likely they were carrying out a scam. Specifically:

- 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 the two founders was potentially used for the intended purpose of Forex trading. Whereas Ms N sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading.
- 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.

Considering all of the above, I do not think V was using investor funds, such as Ms N's, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

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. In regard to the FCA's investigations, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is Ms N entitled to reimbursement under the CRM Code?

I've considered whether HSBC should refund Ms N under the provisions of the CRM Code.

Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

So, I've thought about whether Ms N had a reasonable basis to believe V was legitimate and was providing a genuine investment product. In doing so, I have considered that the investment was recommended to Ms N by someone she trusted, and who she had previously attended courses with. Ms N also received a brochure with an FAQ which looked to be professional and was able to view her investments on a professional looking portal, as well as attending webinars and zoom meetings about the investment herself and speaking directly with an individual associated with V. Ms N also carried out her own checks on what she was told and on the individuals involved in the investment, and what she found satisfied her that V was legitimate.

So, given what Ms N had been told and had seen, and what she had found out herself, I think there was enough to reasonably convince Ms N that this was a genuine investment she could trust. With this in mind, I don't think Ms N made the payments without a reasonable basis of belief that V and the investment itself was genuine. I therefore do not think HSBC can apply an exception to the reimbursement for this reason.

HSBC could also refuse to reimburse Ms N in full if it could demonstrate that she had ignored an effective warning, by failing to take appropriate steps in response to that warning. HSBC has said it showed Ms N a warning when she made the first payment to the scam, but looking at what that warning said I am not satisfied that it meets the definition of an effective warning as set out in the CRM Code. I say this because the warning that Ms N saw was not specific or relevant enough to have been effective in the circumstances. It tried to cover off too many different types of scams, and referred to customers being cold called (which was not relevant to Ms N) and led with a warning about being told to mislead the bank, which was unlikely to be relevant in an investment scam. In any case, much of the advice the warning gave about how to protect yourself was around checks to do on the investment company, and Ms N did take steps to check it was legitimate.

With all this in mind I don't think I can fairly say that Ms N ignored an effective warning in this case, and it follows that HSBC cannot apply this exception to reimbursement either. As a result, I consider that HSBC should reimburse Ms N in full.

Putting things right

HSBC should reimburse Ms N's loss in full.

It should also apply 8% simple interest from the date of the Investigator's view to the date of settlement. I say this because the information our service has relied upon to uphold Ms N's complaint was not readily available to HSBC when the scam claim was first raised. So, it would not have been able to identify the issues that led to the complaint eventually being upheld.

As there is an ongoing investigation by the FCA it's possible Ms N may recover some further funds in the future, through that process. 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 under that process in respect of this 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 Ms N for her consideration and agreement.

My final decision

I uphold this complaint. HSBC UK Bank Plc trading as HSBC UK should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 25 September 2025.

Sophie Mitchell
Ombudsman