DRN-5487134

## The complaint

M complains HSBC UK Bank Plc won't reimburse £10,000 it lost to an investment opportunity that it now considers to be an Authorised Push Payment (APP) scam.

While this complaint concerns M's complaint and loss of funds, throughout this decision I will refer to M's director, Mr W who carried out the payment on M's behalf.

## What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In February 2023 Mr W was introduced to an investment opportunity with a company I'll refer to as 'V'. The introduction came through a business acquaintance and mentor, who had already invested and whose investment appeared to be performing well.

Mr W was put in contact with an individual closely associated with V, who shared further information about V and her own investments. Mr W was also provided with an FAQ document. It set out that V traded primarily on the FTSA100; that it was regulated by Luxembourg Commission de Surveillance du Secteur Financier ('CSSF'), which it said was comparable to the Financial Conduct Authority ('FCA'); and used a broker regulated by the FCA. The FAQ also set out that the fund had previously achieved profits of between 9 and 23%; that it had a 93% monthly trading success rate; and it's trading strategy meant that *"total loss is impossible"*. Interested in the high returns, and reassured by V's past performance, Mr W decided to invest.

In March 2023, Mr W made two payments from M's business account - £500 and £9,500 - to V. Mr W received confirmation from V that the funds had been received; had been deposited into its FCA regulate broker account; and the initial "3-month lock-in" ended on 13 June 2023. Mr W said he was then able to track his investment on V's online client portal. Mr W said he started having concerns about the investment when someone else alerted him that it may be a scam. In June 2023, Mr W received an email from V, which had been sent to all investors, informing them that the FCA had instructed it to stop all trading due to concerns that it was operating without authorisation.

With the support of a professional representative, Mr W contacted HSBC to seek a reimbursement of the funds lost to the scam. HSBC confirmed it had contacted the beneficiary bank to see if any funds could be recovered, but that it would require more information from Mr W to complete an APP scam investigation.
Dissatisfied with HSBC's response, Mr W referred the complaint to the Financial Ombudsman. Our Investigator upheld the complaint. She was persuaded, on balance, the available evidence demonstrated that V was operating a scam and Mr W had a reasonable basis for believing the investment to be legitimate, as such HSBC was required to reimburse M in full. She therefore recommended that it refund the £10,000 M had lost to the scam plus 8% simple interest.

Mr W accepted our Investigator's opinion. HSBC disagreed. In summary it said:

- It was premature to conclude V was operating a scam, considering law enforcement was continuing to investigate, and no charges had yet been brought against any individuals associated with V.
- Available evidence suggested that some trading may have been ongoing through another company associated with V, which could mean investors funds were still held.
- It was not safe or reasonable for the Financial Ombudsman to reach conclusions on the balance of probabilities. It said Financial Ombudsman does not have the full facts, which would only be uncovered as part of the criminal investigation which was ongoing.
- While the Financial Ombudsman have shared some holistic information which may point towards improper conduct by V, that is only part of the full facts, and it is not safe to apply a broad-brush approach to all cases concerning V. And each case should be considered on its own merits.
- There is a significant risk that by reaching a premature outcome, the Financial Ombudsman may prejudice future criminal proceedings, as victims may not be engaged in testifying as they may have already received a refund.
- Without a contract or agreement showing the investment was taken out by M, it is not possible to determine M suffered a loss.
- It disagrees with the principle that HSBC should be liable for a failed investment scheme which it could not reasonably have detected/prevented, and that there was no chance of providing an effective warning.

The complaint has now been passed to me to decide.

**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.

Having done so, I'm upholding this complaint for largely the same reasons as our Investigator. I'll explain why.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

And to be clear, and in response to HSBC's concerns, while I am aware of the broader issues concerning V, I can confirm that I have considered M's complaint on its own merits.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

*The CRM Code*

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. HSBC was a signatory to the CRM Code at the time the payments in dispute were made. As such, it should be aware that the CRM Code is a non-

fault based reimbursement scheme. And so, whilst I note HSBC's concerns that it could not reasonably have detected or prevented M's loss, this does not alter the fact that HSBC would be required to reimburse M if it's claim otherwise met the requirements set out in the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam. Under the CRM Code, an APP scam is defined as:

> *"…a transfer of funds…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 quite explicit that it doesn't apply to all push payments. It says:

> *"DS2(2) 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."*

This makes it clear that *"private civil disputes"* between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

But that doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases. I don't agree with HSBC that this would lead to an unsafe or unreasonable conclusion. It's merely a reflection of the difference between the civil and criminal burden of proof.

So, I would need to see evidence that convinces me it's more likely than not that a criminal fraud has occurred, and therefore that M lost money to an APP scam. If I do find that is the case, then the CRM Code would apply, and M would be entitled to reimbursement of its losses unless HSBC could show that any of the exceptions to reimbursement set out in the code apply.

*Can HSBC delay making a decision under the CRM Code?*

The CRM Code says firms should decide whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be delayed. If the case is subject to investigation by a statutory body and the outcome of that investigation might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. HSBC has confirmed that it is seeking to rely on this clause to delay reaching an outcome on M's scam claim.

Whether R3(1)(c) applies or not, this does not impact M's right to refer a complaint to the Financial Ombudsman. Nor does it impact the Financial Ombudsman's ability to provide an outcome if we consider we have sufficient evidence to reach a fair and reasonable outcome.

*Is it appropriate to determine M's complaint now?*

I understand that investigations into V, by both the FCA and law enforcement, are still on-going. So, I have considered whether it would be appropriate to delay my decision as a result of the ongoing investigation – in the interests of fairness.

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 investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine M'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 M 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 M first raised its claim with HSBC in March 2024, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving M an answer for an unspecified length of time would be appropriate unless truly justified. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware the above processes involved with the FCA investigation might result in some recoveries for V'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 M under those processes in respect of its £10,000 investment before paying anything I might award to it on this complaint.

I'm also not persuaded by HSBC's suggestion that reaching a conclusion on this complaint could prejudice future criminal proceedings, on the basis that victims would not be engaged in testifying. HSBC has provided nothing to substantiate its suggestion that victims would be inclined to testify, and in any event, I'm not persuaded that investor testimony would be a deciding factor, given the volume of documentary evidence that is available.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether HSBC should reimburse M under the provisions of the CRM Code.

*Has M been the victim of an APP scam, as defined in the CRM Code?*

Although HSBC has questioned whether the loss claimed for did in fact relate to M, rather than Mr W personally, I'm satisfied it has provided sufficient evidence that it does.

M has not provided a contract or agreement which sets out that the agreement existed between M and V, but from my experience considering other complaints concerning V this is not unusual as V does not appear to have offered any form of signed contract or agreement as part of its usual process. But I have seen that the payments were made directly from M's business account and the investment was referred to in an email exchange with M's accountant, as it appears the investment had been noted as an "intangible asset" for M's company accounts. Deposit confirmations were also sent to M's company email address. I'm therefore satisfied the investment was made by M, and it is therefore a Customer, for the purposes of the CRM Code.

Under the CRM Code, the starting principle is that a Firm should reimburse a Customer (which includes micro-enterprises such as M) 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 is met (DS1(2)(a)), as set out above. The CRM Code doesn't apply to private civil disputes. So, the CRM Code wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that M's funds were transferred to the intended recipients, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, for there to have been an APP scam, M must have transferred funds to V (or persons associate with V) for what he believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

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 personally by the founding individuals at V did end up with a legitimate forex platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the forex platform.

However, from evidence gather from other complaints considered by the Financial Ombudsman Service, 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.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of forex trading. Whereas investors were assured all funds would be immediately moved to an FCA regulated trading account to be used in forex trading. But this didn't happen.
- Of the investors' funds that were sent to V's business account, these were either sent to a crypto exchange platform or paid to other investors as withdrawals. Mr W has confirmed that M invested on the understanding its funds would be used for stock market trading. He had no knowledge that there would be any trading in crypto.
- 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 crypto. 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 – specifically the claim that they made 23% profit in March 2022 and 9% in August 2022.
- 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 M wasn't involved in a failed investment but a scam. As such, I consider the CRM Code applies.

*Is M entitled to a refund under the CRM Code?*

Under the CRM Code, the starting principle is that a firm should reimburse a Customer who has been the victim of an APP scam, like M. But a firm may choose not to reimburse a customer if it can establish that one or more of the exceptions to reimbursement apply (R2(1)).

As HSBC has not yet answered M's scam claim, it is unclear if it considers any of the exceptions to reimbursement apply. I have therefore considered whether I think it's more likely than not HSBC could fairly rely on any of the exceptions in this case.

HSBC has confirmed that it did not intervene in any of M's payments, beyond confirming that there was a confirmation of payee match and advising M to confirm the validity of payment details. So, I can't see HSBC could reasonably refuse a reimbursement on the basis that M ignored an Effective Warning (R2(1)(a)). And considering the circumstances of this case, I consider the only potentially relevant exception is whether Mr W, on behalf of M, made the payments without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

*Did Mr W have a reasonable basis for belief?*

I have considered whether Mr W had a reasonable basis to believe V was legitimate and was providing a genuine investment product. In doing so, I have given careful consideration to how Mr W was introduced to V, alongside the overall sophistication of this scam.

Mr W was introduced to V by a business acquaintance and mentor, who had himself invested. He was also put into contact with other individuals who shared details of their own investments and profits they'd made. He also attended a seminar held at a hotel, where the investment was presented to prospective investors. I think the information Mr W obtained from these various sources, alongside V's overall presentation as a professional business, would have been compelling and I think it is understandable that Mr W placed weight on what he was seeing and hearing about V.

I consider the sophisticated set up of the scam would also have been compelling – Mr W was provided with brochures and documents which appeared professional; the account opening process followed a similar pattern to what you would expect from a legitimate firm; and V's website and the client portal, which provided the ability to track his supposed investment, appeared professional and legitimate. In the circumstances I can understand why Mr W felt the investment was a genuine one at the time.

I must also take into account that an FCA investigation is ongoing, and HSBC does not consider there is sufficient evidence available yet to determine that V was operating a scam at the time. In these circumstances, I think it would be unreasonable for HSBC to conclude that Mr W didn't have a reasonable basis for belief at the time of making the payments.

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

So, I don't think HSBC has established that any of the exceptions to reimbursement under the CRM Code apply here. It follows that it should refund the money M lost in full.

*Could HSBC have otherwise prevented M's loss?*

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by HSBC at the time of the payments would have positively impacted Mr W's decision-making. As touched on above, I don't think either party would have likely uncovered sufficient cause for concern about V such that Mr W would have chosen not to proceed.

**Putting things right**

I've thought carefully about whether interest should be added to the refund M is due from HSBC. I'm aware that much of the evidence that I have relied on, specifically the beneficiary account statements, only became available because of the investigation carried out by the Financial Ombudsman Service. This information was therefore not available to HSBC when it was asked to consider M's scam claim. The evidence was however summarised to HSBC in our Investigator's initial view, which was sent on 29 January 2025. In the circumstances, I think HSBC ought to have settled M's claim within 15 business days of the date of our Investigator's view.

As an investigation into V is ongoing, it's possible M may recover some further funds in the future. 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 the liquidation process in respect of this £10,000 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 M for its consideration and agreement.

**My final decision**

I uphold this complaint and direct HSBC UK Bank Plc to:

- refund M the disputed payments totalling £10,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from 19 February 2025 (15 business days after our Investigator's view setting out why the complaint should be upheld).

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 16 October 2025.

Lisa De Noronha
**Ombudsman**