

The complaint

Mr H complains that HSBC UK Bank Plc ('HSBC') declined to refund him just under £10,000 which he says he lost as a result of a scam.

What happened

In January 2024, Mr H invested just under £10,000 in a company I will call 'M' who said it was investing in foreign exchange. He sent this in one payment from his HSBC account. Mr H was introduced to M by a friend who told him that they had invested and made considerable returns. Prior to investing, Mr H met the man who I'll call 'Mr G' who controlled the investment, and he visited the company office. He said he also checked the company through HMRC. Mr H believed that M was a foreign exchange 'forex' trading investment company, and the investment capital would be invested to generate a profit. He believed that he would receive a return rate 9.6% for the first three months and 10.6% thereafter.

Mr H received access to an investment portal and monthly statements which showed the growth of his investment. However, in September 2024, Mr H reported that his investment disappeared, and he found out that the man he had met who was said to be controlling the investment had been arrested.

When Mr H realised he had fallen victim to a scam, he reported the matter to HSBC and asked them to reimburse his lost funds. HSBC said that it accepted that Mr H had fallen victim to an authorised push payment ('APP') scam and so it had considered the case under the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code. It declined to refund any of the losses as it said both HSBC and the beneficiary bank had met the standards required of them under the code, but that Mr H had not. It said that he did not do sufficient due diligence to ensure he was dealing with a legitimate investment company.

Unhappy with their response, Mr H escalated his concerns to our service. One of our investigators looked into what had happened and recommended that the complaint should be upheld. They asked HSBC to reimburse Mr H's losses, along with 8% simple interest from the date of the decision to decline Mr H under the CRM Code to the date of settlement.

Mr H agreed with our investigators recommendations but HSBC did not. It said that it disagreed to proceed with this case whilst an investigation into Mr G was ongoing, and said it was entitled to rely on R3(1)(c) of the Code which says they can delay a decision when there is an ongoing law enforcement investigation. It said that the law enforcement investigation was likely to ascertain the full facts which must be considered in order to reach a conclusion based on actual facts, not the balance of probabilities, as to whether there was an actual intent to scam at the prevalent time. It was concerned a premature outcome would prejudice future criminal proceedings. HSBC appeared to be arguing that without this, we could not safely conclude that this was a scam rather than a private civil dispute which would not be covered by the CRM Code. It said that if we were to proceed, it maintained that Mr H had not met the standards expected of him under the Code.

As no agreement could be reached, the case has 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.

When considering what is fair and reasonable, I am 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.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. However, where the customer made the payment as a consequence 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 is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. HSBC was a signatory to the code at the time the payment in dispute was made.

HSBC have raised R3(1)(c) of The Code which 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 must first consider whether this should fairly be applied in this case. If I do not think this should be applied, in order for me to conclude whether the CRM Code applies in this case, I must consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

"Authorised Push Payment scam, that is, 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"*

The CRM Code is also clear at DS2(2)(b) that it 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"*

If I conclude that the payment here meets the required definition of a scam then Mr H would be entitled to reimbursement, unless HSBC has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Mr H's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that he was the victim of a scam rather than this being a failed or bad investment.

Are HSBC entitled to rely on R3(1)(c) in this case, to delay making a decision under the CRM Code?

The CRM Code says firms should make a decision on 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 stayed. If the case is subject to an investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c) to wait for the outcome of that investigation before making a reimbursement decision. After the investigator issued his assessment of this case, HSBC told our service it considers that R3(1)(c) applies in this case.

Where a firm already issued a reimbursement decision, for example by telling the consumer they would not be reimbursed because they did not meet the requirements expected of them under the Code, or because the CRM did not apply in their case as it amounted to a private civil dispute, then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code"*. The Financial Ombudsman Service does not have the power to restart R3(1)(c) - so where a firm has made a reimbursement decision, a consumer is entitled under the DISP rules to ask our service to decide the merits of the complaint about the payment they made fairly and reasonably and on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code. HSBC had already reached a decision on Mr H's claim in its final response letter to him and in its correspondence with this service when it said that Mr H had no reasonable basis for believing he was dealing with a legitimate investment and latterly that it amounted to a private civil dispute. Therefore it cannot seek to delay a decision it has already made, and cannot rely on R3(1)(c) here.

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

In their response to our investigator's view when discussing R3(1)(c), HSBC appeared to now be arguing that we could not safely conclude this was an APP scam such that the provisions of the CRM should apply in this case. This was despite previous conclusions that this was an APP scam as evidenced in their final response letter to Mr H, and their communications with our service. For completeness, I wanted to outline briefly why I think this does amount to a scam and not a private civil dispute.

- Our service obtained a letter from law enforcement which confirms Mr G acting as M was operating a Ponzi scheme and the funds were never invested as customers were led to believe;
- I've also seen receiving bank statements which whilst I cannot share in detail due to the confidential nature of these documents, were not being run in line with the type of investment company Mr G said they offered. Customers' funds did not appear to be used for forex trading, and numerous scam reports have been made against the account;
- M was not registered with the FCA for Forex trading, which is required to do forex trading in the UK;

- The documentation provided by M was not what I would expect to see a legitimate company provide;

So, I think that it is fair and reasonable to assess this case under the provisions of the CRM Code.

Is Mr H entitled to a refund under the CRM Code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr H. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the code outlines those exceptions, and I have outlined the potentially relevant ones above.

One such circumstance might be when a customer has ignored an effective warning. A second such circumstance in which a firm might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Did Mr H ignore an effective warning?

HSBC have argued that it provided an effective warning in this case. Under the provisions of the CRM Code, as a minimum any 'effective warning' needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams. In short – the warning needs to be capable of countering the typical features of the generic scam type identified during the payment journey.

HSBC told our service that the warning Mr H would have seen displayed when he was making the payment would have said the following:

'Is this a scam?

Being scammed doesn't just happen to other people. Don't let it happen to you.

Follow our tips and help keep yourself safe from scams.

Is this a scam? Stop and think:

- *Do you have a digital wallet that only you can access and withdraw money from? Only store crypto assets in a wallet in your own name. If you don't control the wallet this is a scam. Stop now.*
- *Have you responded to an advert? Fake investments often use celebrities without their knowledge, to draw you in.*
- *Are you being offered returns that are much higher than those on offer elsewhere? Is this a limited time offer? Don't rush decisions and always do your own independent research.*
- *Verify companies are registered on the FCA website. You can also check TrustPilot and Google Reviews to check other customer experiences.*
- *Never download any screen sharing software as this gives control of your device to another person.*

Visit our fraud centre. We can help you keep up with the latest scams

If you have any doubts, stop the payment.

By continuing, you agree you've read our warning and accept that we might not be able to get your money back if it's sent to a fraudsters account.'

I do not think this meets the bar to be considered an 'effective warning'. I say this because it was not specific enough to be relevant to the type of scam Mr H was falling victim to. There was general scam advice and information which was not in line with the scam Mr H was falling victim to – such as the information about digital wallets, adverts, celebrity endorsements and screen sharing software. It would not have created any sense that Mr H was at risk of a scam here.

The warning did give some useful advice that could have helped Mr H here – to look at the FCA register. But it does not give any information about why this should be done, what should be checked, or what the FCA were. Mr H was not a professional trader, nor an experienced one, and he would not have understood from the warning how important it was to do checks with the FCA.

Considering everything, I do not think that it would be fair and reasonable for HSBC to rely on this exception to reimbursement.

Did Mr H have a reasonable basis for believing he was paying a legitimate investment company?

I have carefully considered HSBC's representations about whether Mr H had a reasonable basis for believing that the transaction was genuine. But it does not persuade me to reach this conclusion. In particular, I am not persuaded that Mr H failed to take the requisite level of care required for HSBC to choose not to reimburse him under the terms of the CRM Code and I don't consider that Mr H lacked a reasonable basis for belief. I say this because:

- Mr H was recommended the investment by a friend who he had known and trusted for a long time. He said they were a close, lifelong friend. His friend had invested and shown Mr H that he had successfully made money on his investment with M. Mr H had met Mr G in person in what he understood to be M's offices. The combination of these factors were highly persuasive that he was engaging with a legitimate business.
- I do appreciate that the returns were higher than Mr H may have been able to get elsewhere, but they were not so high that I think Mr H should have recognised that they were too good to be true – particularly against the fact his friend showed he had been getting the promised returns.
- There was information about M online on Companies House – but Mr H is not clear that he had not looked at this before making his payment. Even if he had seen it, the nature of the business, the directors and the registered place of business were not the same as Mr H thought. So, I think given that he had met Mr G and been to what he thought were their offices, it is understandable that if Mr H did see this, he would have assumed this was a different company with the same name.
- Mr H did not know that he should research the firm on the FCA register, or that Forex trading could only be undertaken by a suitably registered company. Even if he had seen that they were not registered with the FCA, I do not think this is something he would have understood the meaning of and so would not have been a cause for concern.

- Mr H did try to do checks that he knew he could do. He looked them up with HMRC and could see M had a turnover of £6 million so he thought that this was indicative of a successful, legitimate business.
- Mr H was given an account number, terms and conditions, emails with professional branding, and business updates. Whilst to my eye, they would not be in keeping with a genuine forex trading business, I think to a layperson this would add an additional sense of legitimacy to the business.
- I think the relationship between Mr H and his friend, and subsequently Mr G would have meant that Mr H felt that he could entirely trust M and what he was told about them.

On balance, I am satisfied that when considering all of the circumstances, Mr H's decision to make the payment was not unreasonable. I believe that Mr H believed he was dealing with a legitimate forex trading company which had proven success in his close friend's investment. Mr H was not alive to the possibility he was dealing with a fraudster and this is another reason why I don't think he acted unreasonably by engaging with the Mr G and M, and making the payment.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I am not satisfied HSBC has been able to establish that when Mr H sent the payment he did so without a reasonable basis for belief.

Putting things right

The Code explains that where a customer has met their requisite level of care (which as I have explained, I am satisfied was the case here) they should be refunded all of the money that was lost. So I think it is fair that HSBC should:

- Refund Mr H's losses from the scam in full; and
- Pay 8% simple interest from the date they declined to refund Mr H under the CRM Code until the date of the settlement.

My final decision

I uphold this complaint and require HSBC to refund Mr H's losses in full, along with 8% simple interest from the date it declined his claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 October 2025.

Katherine Jones
Ombudsman