

Complaint

Mr Y is unhappy that HSBC UK Bank Plc didn't reimburse him after he reported falling victim to a scam.

Background

In late 2019, Mr Y became aware of an investment opportunity with a company I'll refer to as Company A. The company claimed to have developed a proprietary algorithm designed to take advantage of stock market volatility and deliver exceptional returns for investors. Around that time, Mr Y made an initial investment of £30,000. In May 2020, these funds were returned to him. It's not entirely clear why, but Mr Y says Company A told him this was because he didn't meet the definition of a "*sophisticated investor*" under Financial Conduct Authority (FCA) regulations.

In July 2020, Mr Y invested a further £60,000, followed by an additional £25,000 in September 2020. The investments were structured as loans with Mr Y as the lender and Company A as the borrower. Mr Y says the fact that he'd previously invested with Company A and he'd been repaid (albeit not his returns, for the reasons already mentioned) helped to persuade him that he was dealing with a legitimate company, rather than a fraudster.

When he later tried to withdraw the proceeds of his investment, he was unable to do so. At that point, he suspected he had fallen victim to a scam. He reported the matter to HSBC and asked to be reimbursed under the Contingent Reimbursement Model (CRM) Code for authorised push payment (APP) scams.

HSBC didn't agree to pay a refund. It said this was a civil dispute, rather than an APP scam. That meant that the CRM Code didn't apply. Mr Y wasn't happy with that response and so he referred his complaint to this service. An Investigator upheld it in full. HSBC disagreed with the Investigator's opinion, so the complaint has now been passed to me to make 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.

The starting point in law is that a bank is generally expected to process payments that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. Mr Y authorised these payments and so he is presumed liable at first instance.

However, that isn't necessarily the end of the matter. At the time of the events in question, HSBC was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under the CRM Code, firms are expected to reimburse customers who fall victim to authorised push payment (APP) scams, except in a limited range of circumstances.

Is it appropriate to determine this complaint now?

The CRM Code only applies if what happened to Mr Y meets its definition of an authorised push payment (APP) scam. HSBC has argued that it remains an open question whether this was a scam. There is, as I understand it, an ongoing police investigation and the liquidator's enquiries might shed light too. HSBC says we should wait until the picture becomes clearer.

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. 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. Additionally, even if such a 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 (the balance of probabilities).

As for any hypothetical investigation by the liquidator, that would normally be for the purpose of maximising recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

To determine Mr Y'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 Y first raised his claim with HSBC in April 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 Y 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 investors in Company A. 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 Y under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don't think it's necessary to delay the determination of this complaint.

Has Mr Y been the victim of an APP scam, as defined in the CRM Code?

The CRM Code applies only to payments that meet its definition of an APP scam. For the purposes of this complaint, it defines an APP scam as one where a customer has:

“transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

The Code also explicitly doesn't cover certain circumstances, including:

“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.”

In order to find that these payments are covered by the CRM Code, I have to be persuaded that:

- (a) the purpose for which Mr Y made the payments was different from the purpose for which Company A procured them; and
- (b) that difference arose because of dishonesty or deception on the part of Company A or those acting on its behalf.

The key issue is what the intentions of Company A were at the time. While I cannot know this with certainty, I must look at the available evidence and see whether it allows me to infer what those intentions likely were.

There is some evidence that Company A engaged in foreign exchange (forex) trading, with records indicating investment activity amounting to just under £5 million. However, this represents only a small fraction of the total funds it received from investors, which was approximately £28 million in total. Most of the funds received by Company A do not appear to have been used for investment purposes. Instead, they were withdrawn to accounts controlled by individuals connected to the company. This raises serious concerns about the legitimacy of the operation and the true purpose for which the funds were received.

While there is an ongoing police investigation into Company A, which has not yet resulted in any criminal charges, I must make my decision based on the civil standard of proof - i.e. whether it is more likely than not that Company A was operating fraudulently at the relevant time.

There is no evidence to suggest that Company A had the capability to generate the exceptional returns it promised to investors, and its proprietary algorithm seems to have been a work of fiction. In practice, the limited trading activity that did take place resulted in a loss. This undermines the credibility of the claims made to Mr Y and others about the company's investment strategy and performance. While one might expect a company to talk itself up and perhaps even make overstated claims to potential customers, in this case it clearly went beyond that.

It also appears that the payments made to some investors were not genuine returns on investment. Instead, it looks likely that they were made to encourage further investment, either from the same individuals or from new investors introduced by those who had already invested. This pattern is consistent with the characteristics of a fraudulent scheme, where early “returns” are used to build trust and attract additional funds.

Taking all of this into account, I am satisfied, on the balance of probabilities, that Company A was operating dishonestly and that Mr Y's payments were made in connection with an APP 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.

Should Mr Y be reimbursed under the Code?

I have gone on to consider whether HSBC needs to reimburse Mr Y under the terms of the CRM Code. As mentioned earlier, the Code requires firms to reimburse customers who have been the victim of APP scams (such as the one I am satisfied Mr Y fell victim to) 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 decline to reimburse a customer if it can establish that:

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

I've considered the available evidence carefully and I'm not persuaded HSBC can fairly rely on either exception. It had the opportunity to provide Mr Y with verbal warnings when he made the first payment in late 2019 and the £60,000 payment in July 2020. Mr Y spoke to employees of the bank on the phone when those payments were made. During those calls, an employee of the bank asked him some basic questions about what he was doing with his money and was reassured by the answers he gave. There was no meaningful attempt to warn Mr Y about the scam risk and so I don't think it can be said that he ignored an effective warning. It doesn't appear that any warning was given in connection with the £25,000 payment.

I'm also persuaded that he made these payments with a reasonable basis for believing he was dealing with a legitimate investment firm. He had also met representatives of Company A, and his interactions with them led him to believe he was dealing with a well-established and competent organisation. In addition, he was asked to sign what appeared to be an authentic legal contract. From Mr Y's perspective, the actions of Company A were consistent with it being a legitimate firm.

It's significant that he had previously invested with Company A. His funds were returned for administrative reasons, but I can see why this strengthened his confidence that he was dealing with a genuine business. It would, after all, be atypical for a fraudster to send such a large sum of money back to him.

Finally, although the returns on offer were higher than those generally available to retail investors, he had been shown information suggesting that similar returns were being generated for other investors. Taken together, these factors mean I consider his belief in the firm's legitimacy was reasonable in the circumstances and so I don't think HSBC can rely on the second exception either. It follows that it should now reimburse him under the CRM Code.

Putting things right

As there is an ongoing investigation by multiple parties, it's possible Mr Y may recover some further funds in the future. 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 Mr Y's investment before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr Y for his consideration and agreement.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr Y accepts my final decision, HSBC UK Bank Plc needs to:

- Refund the payments he made in connection with the scam, less any returns or payments that were received in connection with any of the agreements.
- Add 8% simple interest calculated to run from the date it declined his claim under the CRM Code (30 April 2024) until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 23 February 2026.

James Kimmitt
Ombudsman