

The complaint

Mr and Mrs L complain HSBC UK Bank Plc (“HSBC”) did not reimburse them £25,000 which they say they lost to an investment scam.

What happened

Mr and Mrs L were informed about an investment opportunity by some friends with a company I will refer to as “V”. Interested, they spoke with some other investors who appeared to have successful investments and who had already been able to withdraw returns. They also received brochures and FAQs in relation to V.

After checking the company website and looking V up online, Mr and Mrs L decided to invest and transferred £25,000 from their HSBC account to a personal account held by one of V’s directors on 10 December 2022. However, Mr and Mrs L didn’t receive any returns in relation to their investment and sometime later, they were told that the FCA had started an investigation into V and halted all of V’s activities.

Mr and Mrs L raised a scam claim with HSBC but HSBC declined to offer them a refund of the amount lost. It initially said Mr and Mrs L’s circumstances amounted to a civil dispute between them and V. But it later said this had been communicated in error and it was waiting for industry guidance as to whether Mr and Mrs L’s circumstances could be treated as an APP scam.

Unhappy with HSBC’s response, Mr and Mrs L referred their complaint to our service and one of our investigators looked into things.

The investigator thought it was more likely than not that V was operating a scam and that it was reasonable to reach this conclusion ahead of the FCA completing its investigation it to the activities of V. They therefore assessed the complaint under the Lending Standards Board’s Contingent Reimbursement Model (“CRM”) Code and said they didn’t think any of the exceptions to reimbursement as set out in The Code could fairly be applied to Mr and Mrs L’s circumstances. They therefore recommended a full refund of the £25,000 lost from Mr and Mrs L’s HSBC account alongside 8% simple interest from the date they issued their view on the complaint.

Mr and Mrs L accepted the investigators findings but HSBC did not. It reiterated the complaint should be held under R3(1)(c) of the CRM Code, as there was an ongoing investigation into V’s activities being carried out by law enforcement. It therefore felt our service should wait until the investigation being carried out was concluded.

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.

Having done so, I agree with the outcome reached by the investigator, for the same reasons. I'll explain why in more detail below.

Is it appropriate to determine Mr and Mrs L's complaint now?

I understand that an investigation into V's activities is still ongoing. 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 to all parties.

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 Mr and Mrs L'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 Mr and Mrs L were the victims 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 and Mrs L first raised their claim with HSBC in February 2025, 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 Mr and Mrs L 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 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 Mr and Mrs L under those processes in respect of their £25,000 investment before paying anything I might award to them on this complaint.

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

Have Mr and Mrs L been the victims of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr and Mrs L authorised the payment under discussion here. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions in the first instance. However, that isn't the end of the story. HSBC has signed up to the voluntary CRM Code, which provides additional protection to scam victims.

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) *(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 Mr and Mrs L's circumstances meet the definition of an APP scam as set in the CRM Code above. Having done so, I think that they do. I'll explain why in more detail below.

This service is now aware of a number of issues related to V which suggest it is more likely than not that it was operating as a scam:

- V's claims of it 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 it says it was able to generate via Forex trading.
- It appears that less than half of the funds sent by potential investors to the scheme were used for the intended purpose of Forex trading. Whereas it was Mr and Mrs L's understanding that their funds would be moved to a trading account to be used in Forex trading straightaway.
- 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 were 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 Mr and Mrs L's £25,000, 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.

So, now 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 all parties demands that I should do so. In view of the evidence already available to me as set out above, I don't consider it likely that postponing my decision would help significantly in deciding the issues.

Regarding, 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 the evidence and issues I've discussed here. Furthermore, HSBC hasn't provided an explanation why awaiting the law enforcement investigation would reasonably inform an outcome under the CRM Code. The investigation and potential decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if HSBC, under the voluntary CRM Code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a law enforcement investigation may reveal more detail but as I'm of the opinion

that it is not in question that this was a scam, then that isn't necessary in this particular instance. There is enough evidence here that on balance Mr and Mrs L were more likely than not the victims of an APP scam.

Are Mr and Mrs L entitled to reimbursement under the CRM Code?

I've then gone on to consider whether HSBC should refund Mr and Mrs L under the provisions of the CRM Code. There are generally two exceptions to reimbursement within the Code:

- Mr and Mrs L ignored an 'Effective Warning'
- Mr and Mrs L made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.

HSBC has said it didn't provide a warning for the payment Mr and Mrs L made from their HSBC account as it did not flag on its fraud detection systems. Because of this, HSBC hasn't demonstrated Mr and Mrs L ignored an effective scam warning for the purposes of the CRM Code. So, there is no exception to full reimbursement in relation to this point.

I have then considered whether Mr and Mrs L had a reasonable basis to believe V was legitimate and were providing a genuine investment product at the time they made this payment. In doing so, I have taken into account that Mr and Mrs L had:

- spoken with investors who had already successfully received returns
- received professional and convincing product literature
- viewed a professional looking website and had access to an online portal that looked to be genuine
- Mrs L had invested with V previously and had been able to successfully withdraw her funds

Mr and Mrs L were told to expect returns of around 10-20%. They haven't clearly said over what period these returns were expected over. It does appear that some investors were told they could receive high levels of returns, such as is the case here. But considering all of the other points above, I think there was enough to reasonably convince Mr and Mrs L that this was a genuine investment they could trust. With this in mind, I don't think Mr and Mrs L made their payment 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 reimbursement, so it should reimburse Mr and Mrs L in full.

Putting things right

HSBC should reimburse Mr and Mrs L the £25,000 they lost to this investment scam.

HSBC 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 Mr and Mrs L's complaint may not have been readily available to HSBC when the scam claim was first raised.

*If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs L how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 16 January 2026.

Emly Hanley Hayes
Ombudsman