

The complaint

Mr C complains that HSBC UK Bank PLC ('HSBC') hasn't refunded the money he believes he lost to an authorised push payment ('APP') investment scam.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

In July 2021, a former colleague of Mr C introduced him to an investment opportunity with a company which I'll refer to as 'Company I'. Mr C understood that Company I was primarily a foreign exchange ('forex') trading scheme, and he was told if he invested, he could expect a profit of 4% per month (compounded).

Believing Company I to be a genuine investment opportunity, Mr C invested £20,000 (two payments of £10,000) in July 2021. The investment appeared to be growing as expected, encouraging Mr C to invest a further £35,000 in August 2021 and £8,000 in May 2022.

Between May 2023 and March 2024, Mr C was able to withdraw £18,500 from Company I. However, in July 2024, Mr C received an email, which said the director of Company I (whom I'll refer to as 'N') had handed himself in to the police for deceit and falsifying records, and there was an ongoing police investigation into Company I and N. In response, Mr C tried to withdraw his funds from Company I, but this wasn't successful. Having lost his money and believing he'd been the victim of an APP scam, Mr C asked HSBC for a refund.

HSBC declined to reimburse Mr C, as it didn't think Mr C had been the victim of an APP scam. HSBC believed Mr C's loss was the result of a civil dispute between Mr C and Company I, which it wasn't responsible for reimbursing. Mr C complained about HSBC's outcome, but HSBC maintained its decision not to refund Mr C's loss.

Unhappy with HSBC's response, Mr C referred his complaint to this service. Our Investigator upheld the complaint. In summary, they felt there was sufficient evidence to conclude that Company I was most likely an APP scam, and they recommended HSBC reimburse Mr C's loss, plus interest.

Mr C accepted our Investigator's opinion, but HSBC didn't agree. HSBC said it was inappropriate to conclude Company I was an APP scam whilst there was an ongoing police investigation. HSBC also said Mr C hadn't carried out appropriate due diligence before investing with Company I and he'd ignored a warning that could've prevented the loss.

As an agreement couldn't be reached, the complaint 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.

At the time of Mr C's payments to Company I, HSBC was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code, which required firms to reimburse customers who'd been the victims of APP scams in all but a limited number of circumstances. However, HSBC doesn't think the CRM Code is a relevant consideration in this case.

For the CRM Code to apply to Mr C's circumstances, I need to be reasonably satisfied that it's more likely than not that his payments to Company I were made for a fraudulent purpose – i.e., he was the victim of an APP scam, and his funds were criminally obtained by Company I.

I'm very aware that there is an ongoing police investigation into Company I and N, the specifics of which haven't been shared with this service. 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.

In order to determine Mr C'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 C was the victim of an APP 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 C first raised his claim with HSBC in July 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 C 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 police investigation might result in some recoveries for Company I'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 Mr C under those processes in respect of this investment before paying anything I might award Mr C on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing police investigation for me to fairly reach a decision on whether HSBC should reimburse Mr C under the provisions of the CRM Code. I'm persuaded Mr C has, most likely, been the victim of an APP scam. As a result, I think the CRM Code is a relevant consideration in this complaint. I'll explain why.

To operate legally in the United Kingdom, Company I needed to be authorised and regulated by the Financial Conduct Authority ('FCA'). However, in a post on its website dated 3 January 2023, the FCA confirmed that Company I wasn't authorised and regulated by it, despite Company I claiming to be in its contract with Mr C.

I accept that Company I operating without authorisation from the FCA, contrary to the information in the investment contract isn't, on its own, sufficient to say it was scamming investors. It's possible that Company I intended to trade investors' (like Mr C) money. However, there is additional evidence available which persuades me Company I was, more likely than not, an APP scam.

I've reviewed Mr C's contract with Company I. The contract confirmed that there were no fees payable to Company I for Mr C. So, Company I was agreeing to manage Mr C's investment for free, meaning there was no financial remuneration for Company I to trade Mr C's funds, or an incentive to trade with appropriate due diligence. This doesn't seem like the actions of a legitimate investment firm.

Mr C's contract with Company I guaranteed a monthly return of 4%. I don't think a genuine investment would guarantee a rate of return, when any profit/loss was dependent on its trading success. Company I was also promising an annual profit of £6,010.32 on a £10,000 investment, equivalent to a 60.1% annual return, which seems unrealistic, and a genuine investment firm is unlikely to guarantee such a high rate of return.

Mr C sent funds to a single beneficiary account, which I'll refer to as 'W'. However, other investors have also paid a separate beneficiary account with another firm, which I'll refer to as 'Z'. Both firms have provided statements for the accounts Company I investors paid. W has also provided statements for Company I's linked accounts too.

We've accepted Company I's bank statements in confidence. However, where it's appropriate to do so the FCA's Handbook does allow this service to share a summary of what the evidence has shown.

I've carefully reviewed the statements, but there's very little evidence to suggest Company I was engaged in legitimate investment activities or that Mr C's funds, specifically, were invested in the way that was intended.

Mr C first invested with Company I in July 2021. His funds weren't moved to a trading platform for the benefit of forex trading or other investment activity, aside from a single payment of less than £100 to a forex trading platform. Instead, the funds were paid to other investors (presumably as returns); other companies with no apparent connections to investing; or withdrawn by the director to his own personal account or used for personal expenditure.

The situation was repeated after Mr C invested with Company I again in August 2021, but with no funds being sent to a forex trading platform. This same pattern was repeated after Mr C's investment in May 2022, again with no funds being sent to an investment platform.

After reviewing Company I's statements, I'm satisfied that it's more likely than not that Mr C's funds weren't invested as he was told they would be. There is very little activity that appears to be genuine investment transactions debiting Company I's accounts and there are no transactions crediting the account which are identifiably from a trading platform (or other investment platform), despite substantial amounts being paid to investors as returns. As a result, it seems most likely that the large amount of money Company I paid to investors as returns wasn't funded by legitimate trading activity and was, instead, funded using new investors' funds.

I've seen very little evidence to suggest Company I was a legitimate investment opportunity. And, for the reasons I've explained above, I think it was most likely an APP scam and Mr C's funds were criminally obtained for a purpose other than investing. As such, I'm satisfied Mr C's claim meets the CRM Code definition of an APP scam, and his claim should've been considered under those principles.

So, I've gone on to consider whether HSBC should reimburse Mr C under the principles of the CRM Code. There are generally two exceptions to reimbursement under the CRM Code, which are that:

- Mr C made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or Company I was legitimate; and/or
- Mr C ignored what the CRM Code deems to be an '*Effective Warning*'.

And, importantly, when assessing whether it can establish these things, HSBC must consider whether they would've had a '*material effect on preventing the APP scam*'.

Did Mr C have a reasonable basis for believing Company I was legitimate?

Mr C was introduced to Company I by a former colleague, who had already invested and was working in a senior role for Company I. I think this personal recommendation, from a former colleague, who was an existing investor in, and employee of, Company I, will have been very persuasive to Mr C about the genuineness of the investment opportunity.

Prior to investing, Mr C says he completed online checks on Company I and found no adverse information suggesting it wasn't a genuine opportunity. Mr C also verified that Company I had been registered with Companies House for approximately three years. Mr C was also able to speak to N (Company I's director) multiple times about how the investment would work. Mr C was also invited to attend Company I's office, which he subsequently did after the first investment had been made.

Company I had a professional looking website, a mobile app and an online portal. Before Mr C was able to invest, he signed a genuine looking contract and completed know your customer ('KYC') checks, giving the impression that Company I was legitimate.

I accept the returns Company I was promising (4% per month compounded interest) were unrealistic. However, taking everything into consideration and how sophisticated the scam was, I don't think the rate of return means Mr C didn't have a reasonable basis for believing Company I was a legitimate investment at the time he decided to invest in July 2021.

Mr C did make further investments with Company I in August 2021 and May 2022. At the time, Mr C thought his initial investment had grown as projected and he'd been provided with no information to suggest Company I wasn't genuine. So, I'm satisfied Mr C still had a reasonable basis for believing Company I was legitimate when he made his further investments.

In the circumstances, I'm not persuaded HSBC has demonstrated that this exception to reimbursement applies.

Did Mr C ignore an effective warning?

When Mr C made his first payment to Company I in July 2021, for £10,000, HSBC showed him an investment scam warning. This warned Mr C that fraudsters offer high returns from what appears to be a genuine opportunity. Mr C was advised to:

- talk to someone he trusted that wasn't involved in the investment;
- carry out independent research;
- check Company I wasn't a clone; and
- check Company I was authorised by the FCA.

I accept that the returns being offered were high, but Mr C had been given no reason to doubt Company I wasn't genuine or that his trusted former colleague was involved in a company that was scamming investors. So, I don't think this warning would've been impactful in Mr C's circumstances at the time he made the payment. As a result, I'm not persuaded HSBC's warning was an effective warning as defined by the CRM Code. I'm also not persuaded that the recommended steps would've identified that Mr C was paying a scam and not a genuine investment opportunity.

Mr C had spoken to a former colleague about investing in Company I. Whilst I appreciate Mr C's former colleague was also employed by Company I, Mr C had no reason not to trust the advice he was given. Mr C had also undertaken independent research into Company I, such as checking resources available online. So, broadly speaking, Mr C would've thought he'd already completed the first two recommended steps.

There's been no suggestion made that Company I was a clone of a genuine firm. And, if Mr C had attempted to verify this with his former colleague or Company I, this wouldn't have brought the scam to life. So, by not following this step, it hasn't had a material effect on preventing the scam.

Mr C's investment contract said Company I was authorised by the FCA and this reassured Mr C that the investment opportunity was genuine. I accept that if Mr C had been told to check Company I was authorised by searching for it on the FCA register of authorised firms, that he would've identified it wasn't regulated by the FCA and potentially resulted in him deciding not to invest. However, he wasn't told to do this – he was only told to check Company I was authorised by the FCA and his investment contract said Company I was authorised and there was no reason, at the time, for him to think that wasn't true and Mr C wasn't told how to verify this for himself.

In the circumstances, I'm not persuaded HSBC has demonstrated that this exception to reimbursement applies.

Other considerations

Outside the provisions of the CRM Code, I consider it unlikely that intervention by HSBC at the time the payments were made would've positively impacted Mr C's decision-making, such as his belief that Company I was legitimate. I don't think either party would've likely uncovered sufficient cause for concern about Company I at the time of the payments such that Mr C would've chosen not to proceed.

Summary

Overall, I don't consider it necessary to await the outcome of the ongoing investigations into Company I and N, and any subsequent proceedings that may happen as a result. I'm satisfied, based on the evidence available, that Mr C was more likely than not the victim of an APP scam. And his fraud claim is therefore covered by the provisions of the CRM Code.

I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied HSBC should reimburse Mr C under the provisions of the CRM Code. And HSBC is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mr C under any processes relating to the police investigation and any potential compensation that may be returned to victims.

Putting things right

To fairly resolve Mr C's complaint, HSBC should:

- refund Mr C's outstanding loss of £44,500; and
- pay interest at 8% simple per annum on the refund, from the date HSBC declined to reimburse Mr C under the CRM Code, until the date of settlement.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint.

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

Liam Davies
Ombudsman