

The complaint

Mr L complains that HSBC UK Bank Plc ('HSBC') won't reimburse the funds he lost when he fell victim to a scam.

What happened

The facts of the case are known to all parties and were set out in the investigator's view, so I'll only cover them briefly here.

Mr L was introduced to an investment opportunity with a company I'll call M in this decision by family and by a friend of the family. He understood the investment involved trading in forex and that he would initially receive a return of 7% a month. One payment, in January 2024, was for shares. I have set out in the table below the payments Mr L made to M.

Transaction	Date	Amount	Method
1	10/02/23	£1	Faster payment
2	10/02/23	£5,000	Faster payment
3	12/02/23	£4,990	Faster payment
4	29/03/23	£2,000	Faster payment
5	05/10/23	£3,500	Faster payment
	15/12/23	£4,000 <i>credit</i>	
6	23/01/24	£4,211.85	Faster payment
Loss		£15,702.85	

I can see from Mr L's statements that he received two credits of £2,000 each on 5 October 2023 and 23 January 2024. Mr L has explained that his brother asked him to invest on his behalf. For this reason, Mr L's brother has been added to this complaint as a third party.

Mr L received monthly updates from M.

Mr L says he realised he was the victim of a scam when his account was frozen, and he was unable to withdraw funds. He also received an email from the police which said he was the victim of a Ponzi scheme, and his funds weren't used for the intended purpose. Mr L reported what had happened to HSBC in September 2024.

HSBC said Mr L has a civil dispute with M.

Mr L was unhappy with HSBC's response and brought a complaint to this service. He noted the evidence from the police and that other banks had reimbursed victims of the same scam.

Our investigation so far

The investigator who considered this complaint recommended that it be reimbursed in full. He said that the available evidence, including receiving bank information and police

communication, led him to conclude that the Contingent Reimbursement Model Code (CRM Code) definition of an APP scam had been met. As the investigator didn't think any exceptions to reimbursement could be fairly applied, he recommended that Mr L be reimbursed in full.

Mr L accepted the investigator's findings, but HSBC did not – so the complaint has been passed to me to decide. In summary, HSBC said:

- In accordance with R3(1)(c) of the CRM Code it is entitled to pause giving an outcome. The criminal investigation will establish the full facts which are needed to reach a fair answer, and it is not safe or fair to reach an answer on the balance of probabilities. While the police may have suggested M operated a Ponzi scheme, no charges have been brought. And our findings seem to have been made on a holistic basis, without considering Mr L's individual investment and at what point there might have been an intent to scam.
- Mr L didn't have a reasonable basis for belief. HSBC noted that the returns were too good to be true, if Mr L had checked the FCA website he'd have seen M wasn't regulated, M's stated nature of business on Companies House had nothing to do with investment, and the documents he was provided with don't appear to be professional or legitimate.
- It shouldn't be liable for a failed investment scheme which couldn't reasonably have been detected at the time payments were made and there is no chance an effective warning would have prevented the loss.

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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that HSBC is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's). But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Is it appropriate to determine this complaint now?

In response to the investigator's view, HSBC raised R3(1)(c) of the CRM Code. I have set out this provision below.

R3(1) Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam.

(c) 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.

R3(1)(c) refers to the timeframe in which a business should make a decision on whether to reimburse a customer. As HSBC has already made that decision and said Mr L has a civil dispute with M, it cannot now rely on this provision.

Given what HSBC has said, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing.

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 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; and, even if the prosecution were relevant, any outcome other than a conviction might be of 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 (which – as explained above – is the balance of probabilities).

To determine Mr 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 L 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 L first raised his claim with HSBC in September 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 L 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 process might result in some recoveries for M'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 L under such 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 for wait the completion of the police investigation or court proceedings for me fairly to reach a decision on whether HSBC should reimburse Mr L under the provisions of the CRM Code.

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

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr L's claim falls within the scope of the CRM Code, which defines an APP scam as:

...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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

To decide whether Mr L is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr L thought this purpose was legitimate.

- The purpose the recipient (M) had in mind at the time of the payments, and whether this broadly aligned with what Mr L understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr L thought he was investing in forex trading, which he thought was a legitimate purpose.

I've gone on to consider what purpose M had in mind and whether it was in line with what Mr L thought.

In reaching an answer on what purpose M had in mind, I've considered the wider circumstances surrounding M. The key information is:

- M was not authorised by the Financial Conduct Authority (FCA) to facilitate online trading as it needed to be.
- M is registered at Companies House. But its stated nature of business is unrelated to investing (development of building projects and take-away food shops and mobile food stands).
- Someone who held himself out to be the director of M and who communicated with Mr L regularly wasn't a director, and was banned from being one. Instead, he was in a relationship with someone who is listed at Companies House as a director.
- This service has received information from the receiving bank, which I can't share due to data protection laws. But this evidence doesn't show that M used Mr L's funds for the intended purpose.
- Mr L was approached by the police and told that he was a victim of a Ponzi scheme, and his funds weren't invested as he was led to believe. This is compelling evidence that ties in with what this service has seen.
- Documentation and information provided by M isn't professional looking and shows no evidence of trading activity.

Based on the available evidence, I'm satisfied it's more likely than not Mr L's funds weren't used for the intended purpose and that M obtained the funds through dishonest deception. So, I'm satisfied that Mr L's payments meet the definition of an APP scam and are covered by the CRM Code.

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. 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 evidence and issues I've discussed.

Does an exception to reimbursement apply?

The CRM Code says that Mr L is entitled to a full refund unless HSBC can establish that an exception to reimbursement applies.

The CRM Code says that a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having 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

- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

I have noted HSBC's comments about whether Mr L had a reasonable basis for believing M offered a legitimate investment but am not persuaded by them. Whilst I understand there were some concerning factors, I need to also bear in mind that Mr L isn't an experienced investor. He has explained that he looked at Companies House and saw M was a legitimate company. I can't fairly say that Mr L didn't have a reasonable basis for belief because he didn't notice that M's nature of business didn't tie in with what he was told, or because he didn't know the importance of FCA registration, particularly given the points I will make below.

Mr L has explained that his uncle had a friend who had a car dealership that a director of M had been a customer of for over ten years, and the other director for around five years. The directors of M discussed the investment in M with the accountants at the car dealership who scrutinised the opportunity and were happy with it. After monitoring his friend's statements and withdrawals, Mr L's uncle invested. Mr L's father met the directors of M and also invested. Mr L was reassured by the research and the returns he saw from a family friend (the car dealership owner) and his uncle. Seeing other people's returns over a period of time gave Mr L the confidence to invest his own funds.

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

HSBC hasn't said that an effective warning was ignored when Mr L made the payments or provided evidence of an effective warning being presented at the time. So, it can't fairly rely on that exception to reimbursement either.

As I'm not satisfied that HSBC can rely on an exception to reimbursement, Mr L is entitled to be reimbursed under the CRM Code (less the 'profit' he received).

To correctly identify the point at which interest should be payable from, I've considered whether intervention by HSBC when payment two for £5,000 was made would have made a difference and prevented his loss. Given the points I have made above about the research completed by a family member and a friend of the family, and the fact Mr L had seen they were getting returns, I don't think it would. This means that HSBC should pay interest from the date it declined Mr L's claim under the CRM Code to the date of settlement.

Overall, I'm satisfied Mr L should be reimbursed under the provisions of the CRM Code as set out below.

My final decision

For the reasons stated I uphold this complaint and require HSBC UK Bank Plc to:

- Pay Mr L £15,702.85; and
- Pay interest on the above amount at the rate of 8% simple per year from the date HSBC UK Bank Plc declined Mr L's claim to the date of settlement.

It's possible Mr L may recover some further funds in the future. To avoid the risk of double recovery, HSBC UK Bank Plc is entitled to take, if it wishes, an assignment of the rights to all future distributions under another process in respect of this £15,702.85 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 L for his consideration and agreement.

If HSBC UK Bank Plc is legally required to deduct tax from the interest, it should send Mr L a tax deduction certificate so he can reclaim it from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 December 2025.

Jay Hadfield
Ombudsman