

The complaint

Mr P complains that HSBC UK Bank Plc ('HSBC') won't reimburse him the funds he lost after he fell victim to an Authorised Push Payment ('APP') scam.

Mr P brings his complaint with the assistance of a professional representative, but for ease of reading I will refer to Mr P throughout this decision.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

Mr P was introduced to an investment opportunity, with a company I'll call 'M', by a work colleague. Mr P's work colleague introduced him to somebody who I'll refer to as 'G'. Mr P met G and it was explained to him that the investment involved forex trading and offered a return of approximately 10% monthly.

Mr P has said he was initially hesitant and so didn't invest straight away. However, after around a year he could see that the investment was working for a number of his work colleagues, which was evidenced with them being able to make the returns promised and withdraw their funds. So, believing everything to be genuine, Mr P decided to invest.

Between March 2023 and June 2023, Mr P made a number of transactions from his HSBC account, totalling £35,001. Mr P says he received regular statements, showing returns on his investment and also received regular business updates.

I can see from Mr P's statements that he was able to make a withdrawal for £15,000 on 18 July 2024. However, Mr P has said he was concerned as he'd asked for a full withdrawal but didn't receive this. His concerns that he'd been scammed were confirmed when he also received an email from the police which said he, along with multiple other people, was the victim of a Ponzi scheme, and his funds weren't used for the intended purpose.

Mr P reported the matter to HSBC, but it declined to uphold his fraud claim. In summary, it said that it had sent the payments as requested and in line with its processes. It added that it deemed what had happened to be a civil matter between Mr P and M.

Unhappy with HSBC's response, Mr P brought his complaint to this service. One of our Investigators looked into things and thought the complaint should be upheld. In summary, she recommended that Mr P should be reimbursed his remaining loss in full. She said that the available evidence, including receiving bank information and police communication, led her to conclude that the Contingent Reimbursement Model Code ('CRM Code') definition of an APP scam had been met. Alongside this, the Investigator didn't think any exceptions to reimbursement could be fairly applied.

Mr P accepted the Investigator's findings. However, HSBC disagreed, in summary it said;

- In line with R3(1)(c) of the CRM Code it is entitled to pause giving an outcome. The criminal investigation will establish the full facts and it is not safe nor reasonable to make conclusions based on 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 P's individual investment and at what point there might have been an intent to scam.
- Mr P didn't have a reasonable basis for belief. HSBC noted that the returns were too good to be true, and Mr P didn't carry out any basic research. Adding that had Mr P checked Companies House he would have seen M were not regulated and the documents he was provided with don't appear legitimate.
- It disagreed with the principle that it should be held liable for a failed investment, which it could not reasonably have detected/prevented.

As agreement couldn't be reached, the complaint has been passed to me for a 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.

I'm aware in his submissions Mr P has referred to other victims, who he says have received refunds after making claims to their banks. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr P's complaint.

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 at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. 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 bank to reimburse the customer even though they authorised the payment.

HSBC was a signatory to the CRM Code, which I have mentioned above. This required firms to reimburse customers who had been the victim of certain types of APP scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of a scam – as defined within it .

The main point of dispute here is whether M was operating as a scam or not. HSBC is relying on R3(1)(c) of the CRM Code to defer making a decision on this point. 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. Here HSBC has already made that decision, in its final response letter, in which it said that Mr P has a civil dispute with M, so it cannot now rely on this provision.

But 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 P'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 P 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 P 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 P 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 P under such processes in respect of this investment before paying anything I might award to him on this complaint.

For reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of the police investigation for me fairly to reach a decision on whether HSBC should reimburse Mr P under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate, on the balance of probabilities, that those who invested with M were dishonestly deceived about the purpose of the payments they were making, and that Mr P was the victim of a scam.

Has Mr P 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 an APP scam, as set out in it, is met. I have considered whether Mr P'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 P is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr P 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 P 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 P 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 P 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 P 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 P's funds for the intended purpose.
- Mr P 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 P's funds weren't used for the intended purpose and that M obtained the funds through dishonest deception. It follows that I'm satisfied that Mr P'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.

So, as I'm satisfied Mr P has most likely been the victim of an APP scam, I've considered whether he should be reimbursed under the CRM Code.

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

The CRM Code says that Mr P 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 P 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 P isn't an experienced investor.

Mr P has explained that he met G in person and didn't invest in M straight away. It was many months later and only after seeing others make and withdraw profits, that he decided to proceed. I can understand how seeing other people's returns over a period of time gave Mr P the confidence to invest his own funds and the belief that things were genuine. I also think this supports that Mr P didn't proceed with a complete disregard for risk.

I'm mindful the returns offered here were substantial and more than you would typically expect. However, they weren't completely outlandish, especially when considering Mr P wasn't an experienced investor. And I can understand how Mr P would have been persuaded when he saw others receive returns in line with what they had been promised.

Overall and with all things considered, I think the belief Mr P held was a reasonable one and I'm not satisfied HSBC can rely on this exception to the CRM Code.

The CRM Code also sets out standards that firms are required to meet. 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 P 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, I'm satisfied that Mr P is entitled to be reimbursed his remaining loss under the CRM Code.

Putting things right

For these reasons, I think that a fair and reasonable outcome would be for HSBC UK Bank Plc to;

- Refund Mr P £20,001 (being the sum of the payments Mr P made, less the returns he received).
- Pay 8% interest on that amount, from date HSBC declined Mr P's claim until the date of settlement.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 December 2025.

Stephen Wise
Ombudsman