

The complaint

Miss M complains that HSBC UK Bank Plc did not reimburse the money she lost to a scam.

What happened

In 2023 Miss M learned about an investment opportunity from a family friend. This family friend knew the person running the investment (Mr F) through work, and after investing they had received regular returns. Other members of staff (including individuals who were registered chartered accountants) at the family friend's workplace also invested and received returns. Miss M was interested, and her husband met with Mr F and looked over paperwork relating to the investment. Miss M has said she also checked that the company she was told the investment would be with (which I'll call X) was registered on Companies House.

Miss M was satisfied with what she'd seen, so she decided to invest, and in April 2023 made an initial investment of £5,000. She then received regular statements showing how her investment was growing, and so in December 2023 she decided to invest a further £3,000. Miss M did receive some returns on her investments, up until May 2024, but she was then contacted by a family member who had also invested who said they'd been struggling to contact Mr F. As a result, that family member had contacted the police, and had been told that Mr F had been perpetrating a scam via X, and had been arrested.

Miss M contacted HSBC to report that she had been scammed. HSBC looked into things but told Miss M it considered that this was a civil dispute between her and X, it did not accept any liability for her loss.

Miss M referred her complaint to our service and our Investigator looked into it. Having reviewed the complaint, they were satisfied that Miss M had been the victim of an APP scam. They therefore assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which was in force at the time of the payments Miss M made.

They felt that Miss M had a reasonable basis for believing the investment was genuine, they therefore recommended a full refund of the scam payments (minus any returns Miss M had received), as well as 8% simple interest from the date the claim was declined to the date of settlement.

Miss M accepted the findings, however HSBC did not, it has said that we cannot reasonably reach a conclusion on this case until the police investigation is concluded and charges are brought. 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.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that charges have not yet been brought against Mr F.

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 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 is the balance of probabilities).

In order to determine Miss M'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 Miss M 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 Miss M first raised her 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 Miss M 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 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 Miss M under those processes in respect of this investment before paying anything I might award to her on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the criminal investigation for me fairly to reach a decision on whether HSBC should reimburse Miss M under the provisions of the CRM Code.

Has Miss M been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Miss M authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

HSBC was a signatory of the voluntary CRM Code, which provided additional protection to scam victims at the time these payments were made. 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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

I've therefore considered whether the payments Miss M made to X fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to X and to Mr F, which suggest to us it is more likely that this was a scam. Specifically:

- Mr F told investors he was a director of X when this was untrue and he was actually barred from acting as a director.
- X was not authorised or regulated to carry out the activity Mr F claimed it would be doing.
- Statements sent to Miss M do not show any information about the supposed trading that Mr F said was going on.
- Statements we have seen from the receiving bank do not show the payments Miss M made being used for trading in foreign exchange as she had been led to believe they would.
- The police have said that Mr F/X were operating a ponzi scheme and that there are over 100 victims.
- Mr F has been arrested, and the police are seeking to bring charges against him (although the Crown Prosecution Service has not yet confirmed what charges will be brought against him)
- A director of X was also arrested and interviewed with regards to this scheme, although no further action was then taken against this director.

Considering all of the above, I do not think it is likely that Mr F and X were using investor funds, such as Miss M's, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception, certainly on Mr F's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

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. In regard to the criminal 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 evidence and issues I've discussed.

Is Miss M entitled to reimbursement under the CRM Code?

I've considered whether HSBC should refund Miss M under the provisions of the CRM Code.

Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

So, I've thought about whether Miss M had a reasonable basis to believe X was legitimate and was providing a genuine investment product. In doing so, I have considered that the

investment was recommended to Miss M by someone she knew well, and that she had seen several other individuals – including a close family member and two individuals who were chartered accountants (and therefore could be assumed to have at least some knowledge about such financial matters) – invest successfully in the scheme. Miss M's husband had also met with Mr F directly, and had seen paperwork relating to the scheme. I appreciate that some of the paperwork we have now seen does seem questionable, but given what Miss M had seen from her friends and their colleagues about their successful investments, I don't think this would have reasonably affected her basis for belief that this was a legitimate investment.

In addition, Miss M had checked Companies House and could see that X was a legitimately registered company. I acknowledge that the type of business stated on Companies House did not match up with what Miss M was expecting from her relationship with X, but given what she had seen from people she knew well about their successful investments, I don't think this would have been a clear red-flag to Miss M at that time.

And while I do accept some of the claims made by X about the returns it could generate seem unlikely, Miss M had seen people she knew achieve these returns, and I think this would have outweighed any potential concerns about the returns that were being offered.

Overall, and on balance, I think there was enough to reasonably convince Miss M at the time that this was a genuine investment. With this in mind, I don't think Miss M made the payments without a reasonable basis of belief that X and the investment itself was genuine.

HSBC could also refuse to reimburse Miss M in full if it could demonstrate that she had ignored an effective warning, by failing to take appropriate steps in response to that warning. But I have seen nothing to show that Miss M was shown such a warning, so this exception also does not apply.

With all this in mind I don't think that HSBC can fairly apply any of the exceptions to reimbursement set out in the Code. As a result, I consider that HSBC should reimburse Miss M for her remaining loss in full.

Putting things right

HSBC should reimburse Miss M's remaining loss of £3,350.

It should also apply 8% simple interest per annum from the date it declined Miss M's claim to the date of settlement.

As there is an ongoing criminal investigation it's possible Miss M may recover some further funds in the future, through that process. In order 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 that process in respect of this investment before paying the award.

If HSBC elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Miss M for her consideration and agreement.

My final decision

I uphold this complaint. HSBC UK Bank Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept

or reject my decision before 29 October 2025.

Sophie Mitchell
Ombudsman