

## **The complaint**

Mr and Mrs P complain that HSBC UK Bank Plc (“HSBC”) hasn’t reimbursed them after they fell victim to an investment scam.

## **What happened**

In January 2021, Mr and Mrs P invested £50,001 in a company I’ll call ‘B’ who said it had developed an algorithm to successfully trade in forex and some other investments. They were introduced to B by a representative of another company they had dealings with. Mr and Mrs P understood that they were investing for a period of one year with an expected return of 25%. They received £7,500 in July 2021 from the investment. B went into administration in 2022. Mr and Mrs P say they discovered it wasn’t a legitimate venture, and their money had been lost.

Mr and Mrs P complained to HSBC and asked for it to reimburse their funds. HSBC said that this was a civil dispute between them and B, so the payments made weren’t covered under the Contingent Reimbursement Model (“CRM”) Code (“the CRM Code”) as Mr and Mrs P had claimed.

The matter for referred to the Financial Ombudsman Service and our Investigator upheld Mr and Mrs P’s complaint. They accepted the Investigator’s findings that they’d been scammed and HSBC needed to refund their loss. But HSBC disagreed and said it could rely on section R3(1)(c) of the CRM Code which allows firms to hold off making a scam decision where a statutory investigation might reasonably inform that decision. The bank also said that a link between B and the beneficiary of Mr and Mrs P’s payments hadn’t been established.

As an agreement couldn’t be reached, the case 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.

When considering what’s fair and reasonable, I’m required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It was a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP)

scams like this in all but a limited number of circumstances. HSBC was a signatory to the Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

*"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

The CRM Code doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.

Section DS2(2) makes it clear that "private civil disputes" between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

That doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, I understand that the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Mr and Mrs P have lost this money to an APP scam.

If I conclude, on the balance of probabilities, that the payments in question meet the definition of an APP scam, as defined above, then Mr and Mrs P would be entitled to reimbursement unless HSBC is able to show that any of the CRM Code's exceptions at section R2(1) apply.

#### Can HSBC delay making a decision under the CRM Code?

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to

consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

Based on its most recent response, HSBC believes R3(1)(c) applies in this case because there's an on-going police investigation.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision – for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *“a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code”*.
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide their complaint.

What this means is that the R3(1)(c) provision only applies before the firm has made its decision under the CRM Code.

It's clear from the bank's file submission that following its investigation into Mr and Mrs P's scam claim it concluded that this was a civil dispute between the parties involved. I would therefore argue that R3(1)(c) is no longer an option for HSBC to reply on. It can't seek to delay a decision it's already made.

Nevertheless, I do think it's right that I should consider whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still on-going although its progress is unknown.

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. 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).

In order to determine this 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 P 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. Equally, 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.

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

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

As referenced above, HSBC was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.

HSBC has stated that Mr and Mrs P's payments didn't go into an account held in B's name. It notes that the payments went to a different, registered, company which has now entered administration. The bank says it's unclear if the company moved the funds to B, but if it did then it acted as intended.

I understand the point HSBC is trying to make here. The loan agreement Mr and Mrs P have provided shows that they entered into a contract with B, but they were asked to pay another company. I can see from the written correspondence they've provided that they did question this. Although the reply doesn't appear to have been provided in writing, Mr and Mrs P have said they were told by B to pay this other company who would pass them on to it. I can't see a direct relationship between Mr and Mrs P and this other company – their relationship was with B. And they've said the funds reached B.

When considering the applicability of the CRM Code to the circumstances of what happened here, I'm mindful that Mr and Mrs P didn't make payments to an account they had control over. Instead, I'm more persuaded that the account was under B's control once they payments were received. In these circumstances, the provisions of the CRM Code would still apply.

As there's no dispute that Mr and Mrs P's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mr and Mrs P must have transferred funds for what they believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii). So, I've gone on to consider whether there's convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to what Mr and Mrs P believed, and whether this was a scam or genuine investment.

The evidence I hold suggests that B was in fact operating a Ponzi scheme and not running a genuine investment. While some of the funds received were invested as described the evidence we hold suggests this was less than 17% of what was received for this purpose. And evidence indicates the funds that were invested resulted in a loss. Records also indicate that, despite this loss and the investors' intentions for the funds, almost 68% of the capital received was paid out to investors.

B was not FCA regulated, but some of the activities it was carrying out required regulation – as it was soliciting investments from the public and retail investors. And it appears to have misled investors on its need to be regulated. Its accounts also show it withdrew funds intended for investing and paid these to accounts linked to B and its associates. While it's

possible Mr and Mrs P's funds made up some of the amount that was genuinely invested, I'm not persuaded that B's true purpose in taking their funds was to invest it as they understood. Instead, I consider it most likely B's purpose for the funds was different to what Mr and Mrs P and other investors understood and intended. And that this was because B intended to dishonestly deceive Mr and Mrs P and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

*Are Mr and Mrs P entitled to a refund under the CRM code?*

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam, like Mr and Mrs P. The circumstances in which a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code sets out those exceptions and stipulates that the assessment of whether they can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm. It also states that a firm may choose not to reimburse a customer if it can establish that, in all the circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without 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.

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

Mr and Mrs P made six payments to make their investment into B. HSBC states that it provided a scam warning to them on one of those occasions. The bank says the payment purpose that was selected at the time was 'buying goods and services', and it provided a scam warning accordingly.

I've reviewed the warning HSBC says Mr and Mrs P would have seen at the time. Having done so, I don't think the warning was sufficiently impactful or specific as required under the CRM Code. It says, "*Using your debit or credit card may offer you more protection against fraud*", and "*Beware of false websites and reviews.*" The warning doesn't provide examples of the common features of investment scams.

It is arguable in this case that HSBC couldn't have provided a warning that was 'effective' in the circumstances of this particular scam. But in that situation, the bank then couldn't rely on the exception to reimbursement linked to effective warnings. So, this doesn't change its overall position here, as we'd then be looking to see if any other exceptions did apply.

As part of its submission to our Service, HSBC hasn't indicated it thinks Mr and Mrs P didn't have a reasonable basis for belief. While I've set out my concerns around the legitimacy of the investment, I accept B was genuinely registered at the time Mr and Mrs P invested and there wasn't concerning information available at this time. And they were recommended this opportunity by someone they'd had previously dealings with, who strongly believed this was a legitimate venture. This would have given B credibility. So, I'm satisfied Mr and Mrs P did have a reasonable basis for belief and so, even if HSBC sought to apply this exception, it

also doesn't apply.

As HSBC hasn't established that any of the applicable exceptions to reimbursement under the Code do apply here, I'm satisfied it should refund the money Mr and Mrs P lost, taking into account any returns received.

### **Putting things right**

I don't think any intervention I reasonably would have expected HSBC to carry out would have prevented Mr and Mrs P from making the disputed payments. This is because I don't think either party would have likely uncovered sufficient cause for concern about B such that Mr and Mrs P would have chosen not to proceed.

But as I consider that HSBC should have accepted Mr and Mrs P's claim when it received it, I think the bank should pay 8% simple interest per year on the refund from the date it declined the claim until the date of settlement.

Therefore, in order to put things right, HSBC UK Bank Plc needs to:

- refund Mr and Mrs P the payments made as a result of this scam, less the £7,500 return they received directly from the scammer,
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deductible), calculated from the date the bank declined their claim to the date of settlement.

As B is under the control of the administrators and there's an on-going police investigation, it's possible Mr and Mrs P may recover some further funds in the future. 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 the liquidation process in respect of the payments made from this account before paying the award.

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to put things right for Mr and Mrs P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 2 January 2026.

Gagandeep Singh  
**Ombudsman**