

## **The complaint**

Mr S is unhappy that HSBC UK Bank Plc won't refund the money he's lost to a fraudster.

## **What's happened?**

Mr S was made redundant in 2019 and says he wanted to invest some of his redundancy settlement. He found a company online, which I'll refer to as 'E' throughout this decision, that he thought was offering a genuine opportunity to invest in cryptocurrency. He made a card payment for £257.50 to E on 15 October 2019 from his HSBC account, to cover a small investment and E's administration fees. Mr S says he didn't carry out any detailed checks on E before making the card payment because of the relatively small sum he was investing.

A short while later, Mr S received a telephone call from a representative of E, who told him he'd been appointed as his financial manager ('the manager'). Mr S says that the manager:

- came across as pleasant and plausible.
- talked him through his financial experience and track record of making money.
- explained that E was a newly formed company waiting on full approval from the Financial Conduct Authority ('FCA').
- set out how investing with E worked – including the commission it would take and the variable rate of return he might expect to receive on his investment.
- gave him access to an online account with E which showed that his initial, small investment had trebled.

Mr S says E's website appeared professional and slick, and it had a padlock sign as seen on official websites. He had no prior investment experience, but he was encouraged by the apparent profit he'd made on his initial investment. He was even able to arrange a withdrawal of funds back to his bank account - £86.49 on 18 October 2019.

The manager asked him to imagine what could be done with a larger investment and requested £6,500 to purchase bitcoin. Mr S says he wasn't entirely comfortable with investing such a large amount, but the manager was very persuasive, so he agreed to think about it overnight and do some checks on E. The manager supported this course of action and didn't put any pressure on him, he said Mr S could invest whatever amount he was comfortable with.

Mr S says he checked Companies House and found what he thought was a parent company was registered with it. He also saw that E had some positive online reviews, and it wasn't on the FCA's warning list. This, together with the conversations he'd had with the manager, the online account with E he'd had the opportunity to see and the profits he'd received, convinced him to go ahead. He believed, from what he'd been told by the manager, that he would be able to withdraw his investment at any time. He opened a legitimate online trading account with a genuine cryptocurrency platform, which I'll refer to as 'C' throughout this decision, and made the following payments into that new account via online banking from his HSBC account for the manager to trade with.

amount	date
£6,150	18 October 2019
£11,700	24 October 2019
£25,000	28 October 2019

Mr S says he had lots of contact with the manager via telephone and email throughout the period he was making the above payments.

All of the payments were withdrawn to an unknown external wallet.

When Mr S attempted to make a further payment of £10,000 from his HSBC account on 29 October 2019, C noticed that there had been a flurry of activity on a newly opened account and got in touch with him. C advised Mr S that E was likely to be a scam company, and the £10,000 was not sent.

Mr S reported the scam to HSBC. HSBC declined to reimburse him for the payments he had sent to E. It said that it would've displayed an online scam warning during the payment journey for each payment. And it said that its fraud team stopped the £11,700 payment when Mr S first tried to instruct it on 23 October 2019. At that time, Mr S confirmed to HSBC on the telephone that he was happy for the payment to be made. It was a reasonable assumption that any further payments to the same payee were genuine.

#### What did our investigator say?

Our investigator recommended that HSBC refund all the money Mr S lost to the scam from the £6,150 payment and pay 8% simple interest from the date of each payment to the date of settlement. She said that HSBC had missed an opportunity to discuss the payments with Mr S in enough detail and, if it had, it's likely that the scam would've been prevented.

HSBC didn't accept liability. It pointed out that Mr S sent the payments from his HSBC account to his own cryptocurrency account. It said that it's not responsible for payments made from a non-HSBC account to a fraudster. It also said that if it had asked further questions about the payments, Mr S would have reassured it that he was sending funds to his own account.

HSBC asked for an ombudsman's decision, so 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.

It's common ground that Mr S 'authorised' the four payments from his HSBC account. He made the payments using his debit card and online banking and, even though he was the victim of a scam, and he didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. HSBC had an obligation to follow Mr S' payment instructions, and Mr S is presumed liable for his loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that HSBC should:

- Have been monitoring accounts and payments made or received to counter various

risks, including fraud and scams, money laundering, and the financing of terrorism.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

I've looked at Mr S' account statements as far back as April 2019 and I don't think the card payment for £257.50 he made on 15 October 2019 was particularly unusual or out of character in consideration of the normal account activity. It was a low value payment, and bill and card payments of similar amounts were made from the account on a fairly regular basis. But the payment of £6,150 instructed on 18 October 2019 was relatively high value, for significantly more than any other recent payments out of the account and went to a new payee. So, I think it stood out as unusual and out of character and I think it's reasonable to expect HSBC to have asked some further questions about it.

HSBC has argued that the payments Mr S made were transferred to his own cryptocurrency trading account, so the loss didn't occur on his HSBC account. But cryptocurrency scams often involve money passing through more than one account and they were not uncommon at the time. I think HSBC would've been aware of this. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. By October 2019, when Mr S instructed the disputed payments, I think HSBC ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, although Mr S' losses may not have arisen from the initial transfers, I'm satisfied they ought to have been within the contemplation of, and foreseeable to, HSBC. And I'm satisfied that HSBC can be held responsible for the loss if it could have prevented the scam by asking Mr S some further questions about the payments.

It doesn't appear that Mr S was coached by the fraudster, as is often the case with scams, so I think he would've spoken freely if HSBC had asked him some questions about the first online transfer of £6,150. And I think it would most likely have become apparent that he was being scammed at this point.

By October 2019, I think HSBC had or ought to have had a good enough understanding of how these scams work – including that the customer often moves money to an account in their own name before it is moved on to a fraudster – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think HSBC ought to have asked Mr S some probing questions and given him information regarding the prevalence and typical features of cryptocurrency scams before processing the £6,150 payment. Mr S has said he had no concerns about investing for various reasons – including the information he'd found about E online, that he had access to an apparently professional and secure online account with E and that he had received some 'returns' from his initial investment – and that's what he may have said if HSBC had questioned him. But I don't think the conversation should have stopped there. HSBC could've asked more questions in order to determine whether the typical features of cryptocurrency scams were present here. And it could have provided meaningful advice about cryptocurrency scams.

If HSBC had done enough, I think it would most likely have been obvious to the bank and Mr S that there was a risk of financial harm, and the scam would've unfolded without the £6,150 payment, or any subsequent payments, being made. Of course, HSBC could also

have declined to make the payments altogether based on the information it had received if Mr S still wanted to go ahead with them despite its warnings, and given the circumstances here, I think it would've been reasonable for it to do so.

I appreciate HSBC needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests and I wouldn't have expected it to interrogate Mr S. I also acknowledge that the main perpetrator here is the fraudster. But overall, I think appropriate questions should reasonably have been asked in this case, and if they had been Mr S wouldn't have wanted to go ahead or, if he did, HSBC could've declined to make the payments. Either way, I think the scam would've been prevented and Mr S wouldn't have lost his £6,150 or any further money to the fraudster.

I acknowledge that HSBC had a conversation with Mr S before processing the £11,700 payment but I think this conversation should have happened sooner, and having listened to a recording of the telephone call, I don't think HSBC went far enough – in line with my findings above about the questions I think ought to have been asked, and the information I think ought to have been provided. I've set out a transcript of the call below.

HSBC: Indeed, the online banking access is currently suspended because of the payment made from yesterday going to (C) for £11,700 – is this genuine?

Mr S: Yes, it is genuine.

HSBC: May I ask what the payment is for?

Mr S: It's an investment.

HSBC: Are you aware that for (C) it's a place for buying and selling Bitcoins – is that what you're trying to do?

Mr S: Correct.

HSBC: Have you by any chance received some sort of text, emails or telephone calls claiming to be from HSBC or any third-party company...asking you to make this payment?

Mr S: No.

HSBC: You've done this of your own accord? May I ask if you will be making any further transfers going to the same beneficiary?

Mr S: Quite possibly but none planned at the moment.

HSBC: With your confirmation I'll have your online banking access reactivated and for the payment that was stopped yesterday are you still looking to send this payment today – do you still want me to do it for you?

Mr S: Yes, as soon as possible please.

HSBC: I'll go ahead and reprocess this payment – it will no longer be flagged up for security – it will be with your beneficiary's account in less than an hour – your online banking will be restored.

I also acknowledge that scam warnings may have been provided when Mr S instructed the payments via online banking as HSBC has suggested. But having looked at those warnings, I consider them too general in nature and unrelated to the fraud Mr S fell victim to. So, I don't think they went far enough in the circumstances. I've set out the warnings below.

*“FRAUD ALERT: Don't fall victim to a scam. Criminals pretend to be people you trust, like a company you'd pay bills to, HSBC or even the police. HSBC will never ask you to move money, but criminals will.”*

*“BE AWARE: Have you received an unexpected request to make a payment? If you have, then stop and contact the company using their telephone number from a trusted source e.g. their website.”*

*“IMPORTANT: HSBC will never ask you to disclose any security codes from your*

*Security key, only fraudsters will.”*

Considering everything, I think the fair and reasonable outcome is to uphold this complaint and instruct HSBC to reimburse all the money Mr S has lost to this scam from the £6,150 payment onwards. I can't be sure what Mr S would have done with his retirement settlement had he not fallen victim to this scam. He's said he planned on investing some of the money, as well as using some of it to clear outstanding debt and for day-to-day expenditure. So, I think it is fairest to award 8% simple interest from the date of each payment to the date of settlement, to reflect the cost of being deprived of his money.

I have considered whether Mr S should bear some responsibility by way of contributory negligence. He's said he was aware that E wasn't FCA-regulated. But not all legitimate companies are regulated, and I think Mr S' explanation on why he wasn't concerned about the investment opportunity is reasonable. I think the apparently professional written correspondence from the manager, the information Mr S says he got from the checks he did on E, having access to a seemingly professional and secure online account with E and receiving some 'returns' on his investment was enough to satisfy a reasonable person. Overall, I don't think there was any contributory negligence on this occasion.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint and instruct HSBC UK Bank Plc to:

- reimburse the money Mr S has lost to this scam from and including the £6,150 payment; plus
- pay 8% simple interest per year, calculated from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 April 2022.

Kyley Hanson  
**Ombudsman**