

The complaint

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

What happened

Mr M had been recommended an investment broker 'Kruger Exchange' by his boss. He looked it up on a social media platform and saw it advertising. He checked out its website which he thought fine and genuine and so decided to leave his details. He was later contacted with an investment opportunity.

Mr M and a friend decided to invest together. Some funds were transferred from an account held with another provided (which have since been refunded) and others from Mr M's account with HSBC. Two loans were taken out to fund part of the investment and some other funds came from Mr M's friend.

The transactions were as set out below:

Date	Merchant	Debit/credit	Amount
13 February 2019	Lender 1	Credit	£5,000
14 February 2019	Lender 2	Credit	£7,000
15 February 2019	Coinpop	Debit	£5,000
15 February 2019	Coinpop	Debit	£5,000
15 February 2019	Coinpop	Debit	£2,000
20 February 2019	Friend	Credit	£2,500
21 February 2019	Coinpop	Debit	£2,500
Total			£14,500

Mr M was required to send passport information through to open a trading account and was told he'd be trading through a different company – Coinpop – but he wasn't provided any login details, although he was present when the transactions were made as he allowed access to his computer through Anydesk. Mr M was shown profits on his account but when he asked to make a withdrawal, he was told this wasn't possible and that he could make withdrawals with a special card, which never arrived. This made Mr M suspicious and shortly after this his trading account balance reduced to zero. Although the trader tried to persuade him to deposit more, Mr M refused.

Mr M subsequently asked HSBC to raise a chargeback. But as he didn't have the evidence required at it was raised late, it said it couldn't raise a chargeback. But it did offer £200 compensation for the inconvenience caused.

Our investigator upheld the complaint. She felt the first payment to Coinpop ought to have triggered HSBC's fraud alert systems as the payment was out of character for the account. And although the payments were legitimate cryptocurrency exchanges, the risk to its customer falling victim to a scam ought to have been reasonably foreseeable to it, given the published warnings about cryptocurrency and trading scams. She was satisfied that if HSBC had intervened the scam would likely have unravelled. She also considered whether Mr M had contributed to his loss but found he hadn't.

HSBC disagreed and asked for the matter to be referred to an ombudsman. In summary, it has said:

- Reasonable people would be sceptical about investing large sums on the basis of an advert on social media. And the suggestion the merchant had special insurance which meant Mr M couldn't lose should have set alarm bells ringing.
- It doesn't appear Mr M carried out any checks on the merchant before investing. It was reckless not to check whether the trader was legitimate.
- The investigator concludes the account activity was highly unusual and uncharacteristic but there isn't any suggestion of concerns with the named payees or the merchant. And the opinion refers to general concerns around the increase in crypto scams but not that the level of legitimate trading had also risen significantly. The investigator has departed from the law but not explained why.
- The conclusion that Mr M would have acted differently is hypothetical and isn't a safe or reliable conclusion. It considers it highly unlikely that Mr M would have accepted this was a scam based on one conversation, even had the payment been flagged for discussion.
- It only considers the losses to be foreseeable so far as anyone investing in cryptocurrency might suffer a loss, but it is not required to protect against a bad bargain. He was funding an account in his own name and the payments did not form part of the scam, as the scam took place on the Coinpop platform.
- Contributory negligence is only considered briefly, and it considers Mr M ignored some clear red flags.

The matter was referred to me and I noted that two loans had been taken out to fund the investment. Via the investigator, I asked for some further information. It transpired both loans had been taken by Mr M's friend, in their sole name, although he was a guarantor. He also confirmed that his friend had funded the final £2,500 payment which went to Coinpop. But the friend couldn't remember the reason given for the loans.

I wrote to Mr M informally, as he hadn't suffered a financial loss – the funds invested had been his friend's and not his. Mr M has since provided statements showing he has repaid his friend and continues to repay one of the loans, so he has suffered a financial 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.

Under regulations, and in accordance with general banking terms and conditions, banks and building societies should execute an authorised payment instruction without undue delay.

The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

The payments made by Mr M were made with his debit card. I therefore conclude these were authorised payments – for which Mr M is liable, unless there is evidence HSBC could and should have done more to protect him, which I issue I now turn to.

There doesn't appear to be any dispute Mr M has fallen victim to a scam. The FCA published a warning about Kruger Exchange in March 2019. Whilst this is after Mr M made his payments, it is only a matter of weeks later, and as such I'm satisfied I can rely on this information. There are also reports in the public domain of others being scammed by Kruger Exchange.

HSBC is aware of our general approach to its safeguarding and due diligence duties to protect customers. As well as decisions being published on our website setting out these principles and which quote the relevant rules and regulations, HSBC itself has also had a number of decisions setting out our position.

We are required, and as provided for in the DISP rules, to take into account a regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice, as well as the law, when reaching a decision. And we're tasked with reaching a fair and reasonable outcome in all of the circumstances of the complaint. In doing so, we're satisfied our approach isn't inconsistent with the law.

Mr M made a number of payments. But none of them went directly to Kruger Exchange. Rather Mr M was making payments to Coinpop – a cryptocurrency exchange. The first payment was for £5,000. In the months leading up to that payment, Mr M rarely made a payment in excess of £1,000 and when he did, it wasn't that often. And I can't see that there were any payments to similar merchants, traders or even any investments. This was a substantial increase in Mr M's spending and to a new payee. Like the investigator, I find this payment was unusual and uncharacteristic and indicated a change in operation of the account. I'm satisfied this was unusual such that HSBC systems ought to have triggered an alert and the payment paused, pending further intervention – such as making enquiries, or giving a scam warning.

I have considered the payments were being sent to a legitimate cryptocurrency exchange and so seemingly to Mr M's own account with it. And I accept that buying cryptocurrency is a legitimate exercise. But both the FCA and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. This type of insight is something regulated businesses, including HSBC, ought to take notice of. So even if Mr M had been sending money to his own cryptocurrency exchange account, it didn't follow that his money was safe, in his control or that he wasn't at risk of financial harm due to a fraud or scam. Indeed, in this case, Mr M has explained he never had access to the Coinpop account himself.

Had HSBC carried out its due diligence and duties and asked Mr M about the payment, I have no reason to doubt he would have explained what he was doing. Whilst I accept it had no duty to protect him from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure as far as is reasonably possible, that they are dealing with a legitimate person – such as checking the

trader was authorised by the FCA. And it could have drawn on its own knowledge and information that was in the public domain (already referenced) about the high-risk associated with trading and the potential for fraud and provided Mr M with a potential scam warning.

In saying this, I'm particularly mindful that the way this scam operated and information Mr M was given, was typical for a scam but not for a legitimate investment opportunity – such as the downloading of Anydesk, and the broker or trader having sole or partial access to the cryptocurrency account.

I haven't been provided with any evidence that HSBC intervened before the payment was made. Had it done so, I'm satisfied Mr M would have looked further into the investment in general, whether the trader was regulated here or abroad and likely would have come across the FCA warning for himself. I say that bearing in mind, it didn't take much for Mr M's suspicions to be aroused – not being able to make a withdrawal and not receiving a card he was told he'd received. I'm satisfied an intervention by HSBC would likely have exposed the scam, and caused Mr M to stop trading, thereby preventing any losses. So HSBC should reimburse those losses.

But that isn't the end of the matter. I also need to consider whether Mr M ought to bear some responsibility for the situation in which he found himself. HSBC has referred to what it has described as 'red flags' and some issues on Mr M's part and that a blind eye was turned by him to obvious concerns, due to the unreasonable belief in too good to be true returns. It considers this to be an example of contributory negligence.

I have considered HSBC's arguments carefully. But I'm afraid in the circumstances of this complaint, I don't agree with it. I haven't seen any evidence to suggest Mr M had investment experience such that he ought to have realised he had been given inaccurate information, or that what he was told was too good to be true. HSBC has referred to the 'special insurance' as being one of these issues. However, whilst those in the financial services industry might recognise this as being clearly improbable, I don't believe the same could be said of someone that doesn't have a good knowledge of financial services or of investing. I think the same could be said for Mr M being told this was a low risk investment. Unless there is experience of investing it would be hard to gauge whether what you were told about the level of risk was accurate or not.

I do take its point about investment returns, to some extent. A 15% bonus each month does seem too good to be true. But it's also true that investing in such areas as cryptocurrency can produce good returns, albeit I accept (but as might not be known by the layperson) that such investment areas do come with a lot of volatility. I have weighed that carefully, being mindful of the imbalance of knowledge and/or experience between the parties – HSBC will have far more knowledge and insight about such matters, than the layperson. Overall, I'm not persuaded it would be fair to make a deduction for contributory negligence.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to:

- Reimburse £14,500 to Mr M; and
- 8% simple interest per year to that, from the date of the payments to the date of settlement, less any lawfully deductible tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 June 2022.

Claire Hopkins
Ombudsman