

## The complaint

Mr F complains that HSBC UK Bank Plc has declined to reimburse the money he's lost to a scam.

## What's happened?

Mr F has fallen victim to a cryptocurrency investment scam. He says that he looked for investment opportunities online and came across a company I'll refer to as ('G'). He had no prior trading or investment experience, but his research showed that G had featured on popular television shows, had celebrity customers and had received lots of positive reviews. A charismatic investment manager contacted him and even sent Mr F a photograph of himself. The investment manager persuaded Mr F to invest £250 initially and gave him access to a live portal which he could use to keep track of his investments and profits. Seeing his investments grow gave Mr F confidence and, over time, he was convinced to invest more money.

In August and September 2020, six debit card payments were made. Mr F says that the investment manager made the payments on his behalf after he gave him remote access to his laptop, and he didn't realise they were debit card payments.

Mr F was then advised to open a genuine third-party bank account and pay funds into it that would be invested with G. He was told that the third-party account would assist the flow of money and enable him to invest larger amounts. Between September and November 2020, four faster payments were paid into the third-party account through online and telephone banking and the investment manager moved Mr F's funds on from there. Full details of the debit card payments and faster payments are set out in the table below.

Date of transaction	Type of transaction	Amount of transaction	Currency of transaction	Transaction fee
13 August 2020	Debit card payment	£2,427.36	EUR	£66.75
28 August 2020	Debit card payment	£2,193.24	USD	£60.31
1 September 2020	Debit card payment	£2,255.64	USD	£62.03
2 September 2020	Debit card payment	£2,315.76	USD	£63.68
3 September 2020	Debit card payment	£1,960.59	USD	£53.91
17 September	Debit card	£2,402.29	USD	£66.06

2020	payment			
22 September 2020	Faster payment	£25,000.00	GBP	£0.00
23 September 2020	Faster payment	£25,000.00	GBP	£0.00
5 October 2020	Faster payment	£3,821.00	GBP	£0.00
23 November 2020	Faster payment	£25,000.00	GBP	£0.00

Mr F says he realised something was amiss when it proved difficult to make a withdrawal, the live portal showed a significant drop in profit and his communication with the investment manager dwindled. He reported the scam to HSBC in April 2021.

HSBC declined to reimburse Mr F. It said that he'd authorised the debit card payments, and the faster payments went to an account in his own name, so there was no loss. Mr F referred a complaint about HSBC to our Service.

Our investigator considered all of the evidence and upheld Mr F's complaint. They found that the debit card payments were authorised and made with Mr F's knowledge and consent, but HSBC could've prevented the scam, and Mr F's loss, in conversations it had with him about the £2,427.36 payment on 12 August 2020. They recommended that HSBC refund Mr F's entire loss from that date, minus any money already recovered or refunded, together with interest from the date of each payment to the date of settlement.

HSBC accepted that the payments made as part of the scam were unusual in consideration of Mr F's usual account activity, but it didn't agree that it had caused his loss – particularly in terms of the faster payments which went to an account in Mr F's own name. In relation to the debit card payments, it said it's likely that Mr F was under the scammer's spell and would've responded to any questions it had asked on 12 August 2020 in the way he was told to. So, it probably wouldn't have been in a position to uncover the scam. But, as a compromise, it said that it would refund the debit card payments only.

Our investigator didn't think HSBC's offer was fair, so Mr F's case 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.

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

I've thought about what Mr F has told us and I'm satisfied that all the debit card payments made as part of this scam were properly authorised and authenticated under the Payment Services Regulations. Mr F may not have been aware that the payments were made via debit card, and an agent may have carried them out on his behalf, with his authority. But he consented to money leaving his account. And the payments were made by his agent (the investment manager) using the debit card linked to his HSBC account, after he had been given actual authority to make the payments via remote access to Mr F's laptop. So, the starting point is that HSBC had an obligation to follow Mr F's payment instructions, and Mr F is presumed liable for his loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should make additional checks before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. 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 making a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Considering the low value of the first debit card payment made as part of the scam (just under £250) at the end of July 2020, and Mr F's prior account activity, I don't think it's reasonable to expect HSBC's fraud detection systems to have been triggered by it. So, I don't think HSBC could've done more to prevent this particular loss, and it wouldn't be fair or reasonable to ask it to refund this payment.

But the debit card payment for £2,427.36 which was instructed in mid-August 2020 did trigger HSBC's fraud detection systems and the bank had a telephone conversation with Mr F in which it's reasonable to expect it to have asked some probing questions about the payment in order to satisfy itself that Mr F wasn't at risk of financial harm. But, considering what was said during the telephone conversation, it doesn't appear that HSBC did. HSBC has argued that it wouldn't have been in a position to uncover the scam even if it had done enough during its telephone conversation with Mr F, because it's likely he was under the scammer's spell at the time and would've responded to any questions it asked in the way the scammer told him to. I accept that this may be the case but I've seen the notes the bank made at the time, and it's apparent it was aware that Mr F was on another telephone call whilst he was speaking to it – relaying information to the caller and being told by the caller to start the payment process again straight away. I think this should've raised alarm bells for the bank. It's not unusual for scammers to coach their victims through telephone conversations with their bank when its fraud detection systems have been triggered, and I think HSBC would've been aware of this. HSBC could've declined to make the payment based on what it had heard during its telephone conversation with Mr F and, in the circumstances, I'm satisfied that it would have been reasonable for it to do so.

Of course, HSBC could also have imparted information during its telephone call about the risks of financial harm. For example, it could have told Mr F that scammers often coach their victims through conversations with their bank and advised him what to do if he was in this

situation and/or it could have given him information about relevant fraud and scams based on the details it had been given on the payment instruction – including that scam investment companies often claim to have celebrity customers and to have featured on popular television shows. If it had done so, I think it's likely that Mr F would've realised something was amiss and the scammer's spell would've been broken, if indeed he was under it.

I acknowledge that the main perpetrator here is the fraudster. But overall, I think appropriate questions should reasonably have been asked during the telephone call between the bank and Mr F on 12 August 2020, and relevant information should have been imparted. If this had happened, I don't think it's likely that Mr F would've wanted to proceed with the payment or, if he did, HSBC could've declined to make the payment. Either way, I think the scam would've been prevented and Mr F wouldn't have lost the £2,427.36 payment to the scam, or any further money – so it's fair for HSBC to reimburse his full loss from this point.

For the sake of completeness, I will address HSBC's argument that the faster payments went to account in Mr F's own name, so there was no loss. 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 Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. By late 2020, when the faster payments were instructed, 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 F's losses in terms of the faster payments 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, as it could have here.

Finally, I've considered whether Mr F should bear some responsibility for his loss by way of contributory negligence but, overall, I don't think there was any contributory negligence on this occasion. Of course, there is more Mr F could've done with the benefit of hindsight to protect himself from financial harm. But I'm satisfied that the information he says he got from the online checks he did on G and having access to a live portal showing investment growth was enough to satisfy a reasonable person – especially one that had no prior investment experience and had not been educated on fraud and scams by their bank.

### **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 Mr F's full loss from 13 August 2020 (including transaction fees), minus any money that's already been recovered or refunded; and
- pay interest from the date of each payment to the date of settlement (at Mr F's savings account rate on any money that was transferred out of his savings account into his current account before being moved on to the scammer, and at a rate of 8% simple per annum on any funds that were held in the current account prior to the scam).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 July 2022.

Kyley Hanson  
**Ombudsman**