

## The complaint

Mr M is unhappy that HSBC UK Bank Plc won't refund him after he lost money to an investment scam.

## Background

I issued a provisional decision on this case on 19 April 2022. I've copied the content of that document below.

*Mr M has explained that he was checking his emails and there was an advertisement on the side of his email screen for a cryptocurrency investment. As Mr M uses a reputable email account service, he assumed that any advertisements displayed on the platform would be legitimate. He therefore clicked the link and left his contact details.*

*Mr M says he researched the company advertised and found a professional looking website and no negative reviews, so had no reason to believe the company wasn't legitimate. Mr M received contact from an individual claiming to work for the investment company who would trade on his behalf. He initially paid £250 by card payment and was told he had made £1,500 profit. Mr M says he asked for £300 to be returned, which he received immediately, although his bank statements suggest the payment received was £74.09. He therefore made further bank transfers, which for ease I've referenced in a table below. It is these transfers that Mr M has made a complaint about:*

<b>Date</b>	<b>Payment value</b>	<b>Further comments</b>
28 October 2020	£5,000	Stopped by HSBC for checks before release
29 October 2020	£5,263	
31 October 2020	£5,000	Stopped by HSBC for checks – Mr M decided to cancel the payment before it was processed
2 November 2020	£5,168	
4 November 2020	£15,136	
9 November 2020	£5,056	Mr M calls HSBC to cancel this payment but it has already been processed
12 November 2020	£5,058	
23 November 2020	£16,012	Funded by a HSBC loan

*Mr M says after having made the first two bank transfers, he received £1,300 back in profits, but from his bank statements I can see he actually received a pay out of £663.05.*

*When Mr M attempted to make the first bank transfer of £5,000, HSBC stopped the payment to complete fraud checks. Having listened to the call Mr M had with HSBC, I understand Mr M confirmed the payment was to invest in cryptocurrency, that this was the first 'big' payment he was making and that he'd been with the company for over a month. Mr M explained he was 'having a go' and he 'won't be investing any more'. HSBC asked if he was 'absolutely sure about this company' and Mr M confirmed he'd checked them on the internet and that it was him who had made the initial contact with the investment company. On this*

basis, HSBC released the payment. Mr M then made the second transfer of £5,263 the following day.

Two days later, Mr M tried to make another bank transfer to a different payee for £5,000 but this was again stopped by HSBC for further fraud checks. Having listened to the call, I understand the advisor asked Mr M a series of security questions which Mr M was unable to answer, being away from home. When told he hadn't passed security, Mr M insisted the payment had to go through that day. Mr M was told to call later that day when he was at home, which he did. In this call, Mr M explained the previous advisor had told him the payment 'might be a fraud', and while he confirmed to the advisor it wasn't, he asked the advisor to cancel it so that he 'won't have to worry about it anymore'. He confirmed he'd make the payment again on the following Monday. That Monday, Mr M made another payment to the scammer for £5,168.

Later that week Mr M made a further payment to the scammer for £15,136 and then another payment for £5,056 a few days later. After making this payment, Mr M called HSBC and said he wanted to cancel it as he thought he'd been scammed. When asked why, Mr M confirmed he'd just been on his computer and his shares had all been 'wiped off'. He said his friend also told him it's a scam which put him in this frame of mind. The HSBC advisor explained the payment couldn't be recalled but that they would put Mr M through to another department. However, the call with Mr M cut off before he was transferred through.

Three days later, Mr M made another transfer towards the scam for £5,058. Around a week later he also took a loan out with HSBC for £16,000, and transferred £16,012 to the scammer in the days that followed. Mr M has said the loan was taken out by the scammers on his laptop, with his authority, the reason for the loan marked as 'home improvements'. Mr M says he felt uncomfortable about having lied to the bank, so the following morning called them to try and stop the payment. Mr M says he was given misleading information about whether or not the payment could be stopped, before it was confirmed that the payment couldn't be recalled. Realising he'd been the victim of a scam, Mr M raised a fraud claim with his bank.

HSBC reviewed Mr M's claim but declined a refund. It said that when speaking to Mr M, he appeared to recognise the risk involved in the payments he was making. HSBC also noted that personal loans aren't permitted for high-risk purposes such as share dealing. However it did offer £200 compensation to acknowledge that it could've provided a better service when Mr M called to recall the final scam payment.

Mr B disagreed with HSBC so brought the complaint to our service. One of our investigators considered the complaint and upheld it. He considered that HSBC didn't go far enough in its initial questioning with Mr M to assure itself Mr M wasn't falling for a scam, despite cryptocurrency scams being prevalent. The investigator considered that had Mr M been warned about such scams, he wouldn't have continued with the payments. The investigator considered Mr M's actions during the scam were reasonable, based on having received profits, being given an account to monitor investments and having been speaking to a knowledgeable and apparently professional 'investment advisor'.

HSBC didn't agree with the investigator's recommendation. To summarise some of the key points it disagreed with, HSBC said that:

- Mr M caused, or at least contributed, to his own losses – it noted that Mr M's friend had been able to identify this was a scam after what appears to have been a brief conversation
- Mr M didn't do enough checks to verify this was a genuine company and that

*success stories from the scammer's website are not reliable sources. As Mr M was not an experienced cryptocurrency investor, HSBC considers Mr M should've proceeded with more caution.*

- *8% interest is not appropriate and should be awarded at the account rate, save any redress on the final payment funded by a loan.*

*The case has been referred to me for a final decision.*

### **My provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I intend to partially uphold this complaint. I'll explain why.*

*In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I must take that into account when deciding what is fair and reasonable in this case.*

*But that is not the end of the story:*

- *The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer.*
- *Regulated firms like HSBC are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).*

*And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:*

- *identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something recognised by the FCA in recent years and by the British Bankers Association's (BBA) February 2016 report 'improving outcomes for customers in vulnerable circumstances'); and,*
- *look to identify and help prevent transactions — particularly unusual or out of character transactions — that could involve fraud or be the result of a scam (something also recognized by the British Standards Institute's October 2017 'Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice', which a number of banks and trade associations were involved in the development of).*

*This means that, particularly with the increase of sophisticated fraud and scams in recent years, there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.*

*So, in this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr M, or whether it should have done more than it did.*

*Mr M accepts he authorised the transfers himself. HSBC therefore had an obligation to follow his instructions. Nonetheless, as I've noted above, there are some situations in which HSBC should reasonably have had a closer look at the circumstances surrounding these transactions. I consider that as a matter of good practice, HSBC should've been on the lookout for unusual and out of character transactions. I've thought about what HSBC could therefore reasonably have had knowledge of at the time these payments were made.*

*HSBC called Mr M following the first attempted bank transfer to the scammers. I think this was the right thing for HSBC to have done, considering the value of the payment was out of character for Mr M. While HSBC made some enquiries about the payment, I don't think it went far enough to establish whether Mr M was at risk of financial harm, particularly considering Mr M openly told HSBC that the payment was towards cryptocurrency – an area frequently targeted by scammers. Had HSBC asked further questions, I think it would've had sufficient concerns that Mr M was at risk of financial harm from fraud and had it provided advice on these types of scams, I don't think Mr M would've proceeded with the payment. I say this because Mr M had made one payment already to the scammer, which was an international payment, and had been told he'd made significant profits in a short timeframe, some of which he'd received back. While to an inexperienced investor this may add to the legitimacy of a story, I think HSBC should've been able to identify that an international payment, promises of quick, significant returns and then requests for further bank transfers are 'hallmarks' of these types of scams and had it provided Mr M with advice on this, would've caused Mr M to doubt the legitimacy of the company.*

*As HSBC failed to intervene on this payment, and as I think that made a difference here, I think HSBC is fully liable for reimbursing Mr M the funds he lost in this transfer. I think at this point Mr M hadn't been negligent in making the payment – I say this because Mr M had initiated contact himself with the company in question, had initially invested a small amount to trial with and had valid reasons to think it was legitimate based on receiving returns. However I'm not persuaded the same can be said for all subsequent payments.*

*After attempting to make the third payment for £5,000 on 31 October 2020, which was stopped by HSBC for further checks, Mr M called HSBC and asked to cancel it so that he wouldn't 'have to worry about it anymore'. I've asked Mr M why he decided to cancel this payment, what had worried him at this point and what then reassured him to continue making payments days later. Mr M confirmed he is adamant he did not try to cancel this payment and that it wasn't blocked by HSBC. While I appreciate these events happened some time ago and Mr M may not recall the details of each individual payment, I have listened to the call that took place between Mr M and HSBC relating to this particular payment which is contemporaneous evidence. The HSBC advisor confirms the payment value and payee, which correspond to the attempted (and cancelled) payment from 31 October 2020 so I'm satisfied that HSBC stopped this payment for further checks and that Mr M then decided to cancel the payment before it was released.*

*I therefore think that after this point, Mr M had some concerns about the legitimacy of the payments he was making. Mr M also demonstrated he had concerns about the investment on 9 November 2020 when again he called HSBC requesting to cancel a payment, advising his account had been 'wiped' and that his friend had told him it was a scam. However Mr M continued to make a further two payments to the fraudster after this point. As Mr M can't recall this phone conversation, it's not clear why he proceeded to make further payments. Mr M initially told us that throughout the scam he was led to believe his profits were increasing – the final £16,000 payment being commission to release his profits. In later testimony, Mr M said his advisor told him he was losing money – and the £16,000 loan was to pay back 'temporary bonuses' the scammers had applied to his account. Either way, it seems Mr M's earlier concerns about the investment had continued to build, and yet he decided to proceed anyway in fear of losing money he'd invested so far.*

*As Mr M had concerns from 31 October 2020 onwards, but he decided to proceed in spite of these, I think he should be held jointly liable for these losses, with HSBC refunding 50% of the losses he incurred to acknowledge it also could've done more to stop the scam.*

*HSBC has suggested that applying 8% simple interest is not appropriate and that interest should be awarded at the account rate. Given the average costs of borrowing over time, it has long been our approach that this is a suitable rate to compensate for being deprived of funds and I'm satisfied it's fair to apply it in the circumstances of this complaint.*

*I've also thought about whether the compensation HSBC has awarded for the service it provided was fair. I appreciate HSBC's actions may have temporarily given Mr M hope that more could be done to retrieve his money – but as Mr M's payment transfer was irreversible by this point, I don't think this error had a financial impact on Mr M – and I think the £200 already awarded by HSBC is fair to acknowledge the disappointment the unclear communication caused.*

*I appreciate this will be disappointing to Mr M, being a reduction in redress to what was previously recommended. But in all of the circumstances of the complaint, I think this is a fair outcome to reflect both party's responsibilities.*

### **My provisional decision**

*My provisional decision is to partially uphold this complaint and for HSBC UK Bank Plc to refund Mr M:*

- *100% of the first two successful bank transfers Mr M made (totalling £10,263), with a deduction of £737.14 for 'profits' Mr M received back.*
- *50% of bank transfers three to seven Mr M made to the fraudster*
- *8% simple interest from the date Mr M made these payments to the date of settlement.*

Both parties have now had the chance to respond to the provisional 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.

Mr M accepted the decision and asked for clarification on whether HSBC are being held liable to refund the interest he paid on the loan and to remove any adverse credit information on his file. I explained I am not awarding further redress to cover Mr M's loan interest as I consider 8% simple interest is fair across all payments, to holistically acknowledge Mr M being out of pocket from the scam. As HSBC wasn't given an accurate reason for taking out the loan, and I've concluded that Mr M was partly liable at the point he requested the loan, I also don't think HSBC needs to remove any adverse credit information on Mr M's file.

HSBC didn't provide any further comments following my provisional decision.

As neither party has presented any additional evidence or arguments, I see no reason to depart from my provisional findings, and I remain of the view that this complaint should be partially upheld for the reasons set out in my provisional decision.

## **My final decision**

My final decision is that I partially uphold Mr M's complaint and for HSBC UK Bank Plc to refund Mr M:

- 100% of the first two successful bank transfers Mr M made (totalling £10,263), with a deduction of £737.14 for 'profits' Mr M received back.
- 50% of bank transfers three to seven Mr M made to the fraudster
- 8% simple interest from the date Mr M made these payments to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2022.

Kirsty Upton  
**Ombudsman**