

## The complaint

Mr P complains that HSBC UK Bank Plc won't refund the money he lost when he fell victim to a scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my decision.

For reference, I've set out the disputed transactions:

Date	Payment amount	Transaction fee	Running total
4 May 2020	£1,583.36	£43.54	£1,626.90
5 May 2020	£1,762.97	£48.48	£3,438.35
29 May 2020	£2,248.75	£61.84	£5,748.94
29 May 2020	£4,497.49	£123.68	£10,370.11
29 May 2020	£4,497.49	£123.68	£14,991.28
29 May 2020	£898.60	£24.71	£15,914.59
29 June 2020	£4,550.29	£125.13	£20,590.01
1 July 2020	£4,573.44	£125.76	£25,289.21
1 July 2020	£4,573.44	£125.76	<b>£29,988.41</b>

## 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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- In line with the Payment Services Regulations 2017 and general banking terms, HSBC is expected to process authorised payment instructions without undue delay. So, as Mr P authorised these payments (even though duped by a scam), the starting position is that he's liable.
- But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If HSBC failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.
- In this instance, HSBC identified the very first scam payment for further checking. And it does appear out of keeping with Mr P's usual account activity. It was to a new payee, connected to cryptocurrency, and he didn't have a history of making payments of this size. So the key question is whether HSBC responded fairly and proportionately to the risk it identified.

- Based on the available evidence, I understand Mr P had to call and confirm he'd requested the payment – but he *wasn't* asked about the circumstances of this. I'm not persuaded that was a proportionate response to the risk HSBC identified. A key feature of these scams is the consumer is tricked into making the payment, believing the investment to be genuine. So checking Mr P knew about the payment wasn't enough for HSBC to satisfy itself all was well.
- I'd also highlight that, in these types of scams, it's common for funds to be transferred through other accounts first – such as to purchase cryptocurrency for the 'investment'. That's what happened here. Mr P was directed to set up a wallet with a legitimate merchant and to give the scammers access to this, so they could transfer the cryptocurrency he bought onto the 'trading platform'. Given that the FCA and Action Fraud had published warnings about cryptocurrency scams in mid-2018, these are factors HSBC ought to have been aware of when the payments were made in 2020.
- If it had asked reasonable questions of Mr P, I think HSBC would have realised he was the victim of a scam. For example, if asked about how he'd been contacted and how he came to set up the account, I've no reason to doubt he would have explained that he'd found the company online, using what HSBC ought to have realised was a fake celebrity endorsement. And that the company had directed him to set up, and given them access to, his cryptocurrency wallet – so they could transfer these funds onto the alleged trading platform. These are clear, well-established hallmarks of a cryptocurrency scam.
- On balance, I'm satisfied that if HSBC had warned Mr P why this sounded like a scam, he wouldn't have made these payments. Whilst he was persuaded by the trading platform, HSBC could have explained that it's common for such scams to involve manipulated software. As an inexperienced investor, I think Mr P would have relied on what his bank told him and stopped – preventing his loss.
- Whilst the payments didn't go direct to the scammer, as noted above, that's common in these types of scams. Having identified Mr P's payment as unusual and suspicious, if HSBC had intervened appropriately, I've found it would likely have been on actual notice that he would suffer financial harm from fraud. As this loss ought to have been in the contemplation of and foreseeable to HSBC, I consider it fair and reasonable to hold it liable for the loss.
- I've also considered whether Mr P is partly to blame for what happened. I don't think he reasonably foresaw the risk this was a scam. Unlike the bank, he was a layperson unfamiliar with these types of scams. He was persuaded by what he thought was an endorsement from a public figure; the professional-looking website and trading platform; and his ongoing contact with the scammer. Whilst I accept Mr P could have done more research, I'm conscious that, as time – and the overall amount of his investment – went on, he would reasonably be more reliant on the platform and his contact with the scammers. In the circumstances, I'm satisfied there was no contributory negligence.

### **Putting things right**

HSBC UK Bank Plc should refund Mr P's loss from his first payment onwards, which I understand totals £29,988.41. And it should pay 8% simple interest per year on that amount from the dates of payment to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from

that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 August 2022.

Rachel Loughlin  
**Ombudsman**