

## The complaint

Mr U complains that HSBC UK Bank Plc ('HSBC') won't reimburse funds he lost after he fell victim to a scam.

## What happened

In June 2021, Mr U met someone online on a social media dating platform (for ease I'll refer to as A). They then began speaking via an instant messaging application. After speaking for around two weeks, Mr U explains he believed he had a future with A.

Within their communication, A told Mr U about an opportunity to gain huge profits by investing in cryptocurrencies. She introduced Mr U to a trading platform she said he should invest in and, also recommended a broker to him, who I'll refer to as CF. Mr U was told by A that her uncle worked for CF.

Mr U says he was initially hesitant to invest but was encouraged by A. Mr U told us he looked at the website for CF and this looked legitimate to him. He said he was emotionally involved in the relationship with A and didn't think of anything else. He wanted to make more money in order to secure a good future with A.

Mr U told us A helped guide him to set up accounts with two different cryptocurrency exchanges – I'll refer to one as B and the other as C – where he could buy cryptocurrency for the investment. Mr U says he set up the accounts which he had control of with B and C.

For completeness, it's helpful to set out that Mr U made initial payments from an account he held with a different bank – I'll call Bank B. He's explained from his account with Bank B, he made an initial payment of £500 which he sent to B. From his account at B he then transferred his funds to CF. Mr U told us he made \$200 from one transaction and so he thought the investment was legitimate. Mr U has told us that he also invested around £10,000 from his account with Bank B which he says made around £7,000. He did request to withdraw money but says he was told by CF that he wouldn't be able to until a certain balance was reached, which he adds was confirmed to him by A.

Mr U says he then lost the money he invested from Bank B. To get this money back he was told he'd need to invest more. Mr U was then persuaded by A to take out two loans with HSBC totalling £25,000. He says he was told by A the reasons to give for the loans. He then borrowed just over £5,300 from a friend which he also used to invest.

The transactions made and other relevant activity are set out in the table below.

<b><i>Date of payment</i></b>	<b><i>Type of payment</i></b>	<b><i>Merchant</i></b>	<b><i>Amount</i></b>
13/06/2021	Loan One Capital		£15,000
13/06/2021	Faster Payment	B	£10,000
14/06/2021	Faster Payment	B	£5,000

16/06/2021	Loan Two Capital		£10,000
16/06/2021	Faster Payment	B	£10,000
14/07/2021	Incoming credit		£5,359
14/07/2021	Faster Payment	C	£5,400
		<b>Total loss</b>	<b>£30,400</b>

Mr U explains he saw he was gaining his money back and also the investment was growing. He requested a withdrawal. He was told by CF he'd need to pay a 10% release risk fee to process the withdrawal, at which point he says he became aware he'd been the victim of a scam. Mr U told A about this and she told him to borrow more money. He says it was then that he became suspicious of A and stopped his contact with her.

Mr U reported the fraud to HSBC and asked them to refund him.

HSBC investigated Mr U's fraud claim but declined to refund him. HSBC explained that the payments Mr U made weren't eligible under the Contingent Reimbursement Code (The CRM Code) as the funds went from an account in Mr U's name at HSBC to an account in his name with B and C – and the CRM Code specifically doesn't cover payments in that situation. HSBC recommended Mr U liaise directly with B and C about the recovery of his funds. HSBC also said it had reviewed Mr U's loan applications and there hadn't been a bank error. It said the applications had been processed correctly in line with its internal procedures.

Mr U has told us he also reported the scam to Bank B. In this decision I will only be commenting on the payments Mr U made from his HSBC bank account. I have made references to Bank B only for the purpose of setting out what has happened here. Mr U told us Bank B refunded the money he lost from his account with it. As a complaint about Bank B has not been progressed or considered by our service, I make no findings regarding the payments Mr U made with Bank B.

Mr U wasn't happy with HSBC's response, so he brought a complaint to our service. An Investigator looked into his complaint and upheld the complaint in part. She said the payments Mr U made were unusual for his account activity. She noted he'd taken out two loans which allowed him to carry out three payments to B. She considered HSBC ought to have been concerned about the payments Mr U was making and had it intervened and asked questions - she thought it would've been apparent Mr U was falling victim to a scam. However, she also thought Mr U should bear some responsibility, as she thought there were factors which ought to have prompted him to conduct further research.

On this basis, she recommended HSBC refund 50% of Mr U's loss from and including the first payment made, along with 8% interest (excluding the payment made from money borrowed from Mr U's friend), 50% of the interest and charges on the second loan Mr U took out and, pay £150 compensation.

HSBC disagreed with the outcome reached by our Investigator. In brief it said:

- The payments Mr U made were to legitimate organisations and there is no indication that he didn't have full control of the accounts. It referenced a previous decision issued by our service and said our Investigator's view cannot be said to represent our service's view on good industry practice at the relevant time.

- That Mr U was dishonest about the purpose of the loans he took out and had he been truthful about the purpose, the money wouldn't have been loaned to him and the payments to B couldn't have taken place.
- Mr U's actions demonstrate he was determined to make the payments and it doesn't consider he would've changed his course because of a warning from it.
- Whilst a 50% deduction has been made due to Mr U's conduct, it considers he should be fully responsible for his loss. It adds Mr U was determined to make the payments come what may, regardless of intervention.

After considering HSBC's points, our Investigator wasn't persuaded to change her position.

As HSBC disagreed, the case has been passed to me to decide.

Following a review of the case, I reached out to both HSBC and Mr U to set out what I thought was fair and reasonable redress recommendations. Both parties have had the opportunity to consider these and I will explain more below.

### **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 partially uphold this complaint. I'll now explain why.

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.

It's not in dispute that Mr U authorised the scam payments. Mr U was duped by the scammers into instructing the bank to transfer money to two cryptocurrency accounts which he had control of and from there he sent the money onto the scammers. So, while Mr U didn't intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and condition of his account he is presumed liable for the loss in the first instance.

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.

As our Investigator explained, the payments Mr U made as part of this scam are not covered by the CRM Code. This is because the CRM Code covers APP scam payments when the funds are transferred to another person and not to a consumer's own account. In this case, Mr U sent the money to legitimate cryptocurrency exchange accounts that he says he set up and were in his own name.

Nonetheless, 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 therefore looked at what I think is the heart of the matter here, being; should HSBC have recognised Mr U's payments as being suspicious and intervened to try and mitigate the risk of him falling victim to financial harm from fraud.

Our Investigator within her assessment didn't consider the online warnings given to Mr U when he made the payments to have been effective or impactful. HSBC in response commented that this appears to reference the CRM Code which doesn't apply here. In any event, it doesn't accept this view. HSBC say that had Mr U selected the correct payment options, he would've been told to check the company he was dealing with was genuine and registered with the Financial Conduct Authority (FCA). I don't think I need to specifically comment on the online warnings Mr U saw when making the payments in this particular case. This is because the CRM Code doesn't apply to the payments Mr U made, and I'm persuaded written warnings weren't enough of an intervention in the circumstances. I think HSBC ought to have done more here and contacted him about the payments. I will now explain why.

Having considered the fraudulent payments against Mr U's usual account activity, I think the initial payment made was unusual enough that HSBC ought to have intervened before processing it. I say this because from reviewing Mr U's bank statements, from July 2020 up to the scam payments, I can see Mr U seldom made payments of any substantial value. The payments made by Mr U were generally low in value. In this case, there was an incoming loan credit of £15,000 and the same day the loan funds credited the account, Mr U made a payment of £10,000 to a cryptocurrency exchange - B. I think this payment was considerably out of character given his previous account usage and account activity. The payment made to the cryptocurrency exchange utilised two thirds of the loan credit into the account. I can't see Mr U had previously made a payment for anywhere near this amount before and it was to a new payee. There is also no evidence of large payments coming into his account previously and then being paid straight out. So, I'm persuaded this ought to have caused concern to the bank.

While I accept that buying cryptocurrency is a legitimate exercise, both the FCA and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. And in May 2019 Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something regulated businesses including HSBC, ought to take notice of. So even if Mr U had been sending money to a legitimate cryptocurrency exchange, it didn't follow that his money was safe, or that he wasn't at risk of financial harm due to fraud or a scam.

Had HSBC carried out its due diligence and duties and asked Mr U about the payment, I'm persuaded the answers he more likely than not would have given, would have revealed 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 Mr U with information about the high risks associated with these types of investments and common hallmarks of scams, which were present in this case.

I'm mindful HSBC disagrees and doesn't think intervention would've made a difference here. HSBC has highlighted Mr U was untruthful about the purpose of the loans he took out. It says Mr U's actions demonstrate that he was determined to make the payments and it doesn't consider he would've changed his course because of a warning from it. It considers Mr U was determined to make the payments come what may, regardless of intervention and believes he would've been more likely to pay attention to the scammer rather than the bank. I've thought carefully about this point, but I'm afraid I don't agree. Mr U told us he followed the instructions of A as to what reasons to put for the loans on the basis that it would help the likeliness of the loans being approved. While I accept the reasons given for the loans were not a true reflection of what the funds were intended for, I don't think it automatically follows that he would've deliberately deceived the bank or not been honest about what the payments were for had the bank questioned him about them.

It is difficult to know exactly what would have happened had Mr U been contacted at the time and asked a few questions about the activity he was carrying out. But I think it's likely he would have revealed he was making payments to cryptocurrency accounts he'd set up in his name and from there sending funds to a broker he was introduced to by A – whom he'd recently met (but not met in person) and believed himself to be in a relationship with. And while Mr U followed the instructions of A as to the reasons for the loans, I've not seen anything that suggests he was provided with a cover story. So had HSBC asked Mr U questions about the initial £10,000 payment to B, I think it likely the bank would've seen that he was using loan funds to make the payment. On asking Mr U about the loan money that was being used to make a payment to a cryptocurrency exchange, I'm persuaded he would've shared he'd been encouraged by A to borrow money to keep investing.

Even, if only some of the above was revealed, I think this ought fairly and reasonably to have given HSBC cause for concern and would have put them in a position to give a very strong warning to Mr U that he was falling victim to a scam - given that these are common hallmarks of investment scams.

I am mindful that Mr U had already invested funds from his account with Bank B. But I've not been given any compelling evidence that he would've carried on regardless of any warning provided by the bank. In any event, I think it's likely that a conversation would have likely caused the bank to have such concern that it may have had reasonable grounds to prevent Mr U from carrying out further transactions.

I'm also not persuaded that such intervention would have been any less effective because of Mr U's circumstances and relationship with A. I say this as Mr U did stop his contact with A after she continued to encourage him to borrow more money. And as I've said, I've not seen anything that suggests Mr U was given a cover story and as the bank would've been speaking with Mr U, it would've been able to take the necessary steps and advise him on the common features of the type of scam he was falling victim to.

So, based on everything I've seen and been told, I think HSBC's failure to pick up on the unusual activity has caused Mr U loss.

But that isn't the end of the matter, I also need to consider whether Mr U ought to bear some responsibility for the losses he incurred. HSBC has stated Mr U should be held fully responsible for his loss. As I've explained above, I satisfied HSBC ought to have intervened and asked Mr U about the payment he was asking to make before processing it. And on balance, I think it is more likely than not that intervention would have made a difference for the reasons I've already explained.

However, I do agree that from the outset there were causes for concern that ought to have made Mr U pause and further question what he was being told. Mr U himself, has said he has part responsibility for what has happened. From the messages Mr U has given to us of his conversations over the instant messaging app, I can see early on he commented he was reluctant to communicate with people from the social media platform as there are many scams. Mr U was also told A's family member worked for CF and he was in contact with him about investing. I've seen that at one point he mentioned he needed to assess his risks and that he also referred to the family member as 'bullish' to A. Mr U was persistently encouraged to borrow funds in order to carry on investing – whether this be from family or friends, loans or loan sharks. I think this ought to have been a flag to Mr U as he was investing beyond his means. And while I recognise there was an aspect where Mr U believed his actions were linked in some part to his relationship with A, I think her instructing him to choose different reasons for the loans to better the chances of him being approved for the borrowing was a further factor that ought to have given him pause for further thought.

All in all, I think there was enough going on here that ought to have raised questions with Mr U prior to the first payment he made and that ought fairly and reasonably to have prompted him to do further research. It follows that I'm satisfied Mr U ought to bear some responsibility for his losses by way of contributory negligence and the compensation should be reduced accordingly. Having thought about this carefully, I find a reduction of 50% compensation to be appropriate. Both parties could have done more here to prevent the financial loss.

For completeness, I note HSBC raised the final payment, which was funded from the money borrowed by Mr U's friend, is not a loss suffered by him and should not be recoverable by Mr U. Mr U has told us he has not repaid the money he borrowed from his friend and so I'm satisfied it is fair and reasonable that this loss be included within my recommendations. Although I have kept in mind where these funds originated from when thinking about any interest award recommendation.

### **My final decision**

My final decision is to partially uphold this complaint and for HSBC UK Bank Plc to:

- Refund 50% of the money Mr U lost to the scam, from and including the first payment made.
- Pay 8% interest on the amount being refunded that Mr U had sent to the scammer from his own money.
- Had HSBC refunded Mr U at the time, it's likely that he would have repaid 50% of the first loan immediately - so he should now get 50% of the interest and charges he paid towards the first loan refunded.
- The second loan hadn't been taken out yet - so he wouldn't have made payment three. So, the same principle applies - HSBC should now refund 50% of the interest and charges.
- In relation to both the points above, Mr U should receive interest (likely 8% depending on where the funds came from) on any payments he made towards the loan.
- As the final payment was money from Mr U's friend, who presumably didn't charge any interest, he shouldn't receive any interest on this amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 19 December 2022.

Staci Rowland  
**Ombudsman**