

The complaint

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

What happened

The background to this complaint is well known to both parties and has been well detailed in our investigator's view, so I won't repeat it in detail. But in summary and based on the submissions of both parties, I understand it to be as follows.

In April 2020 Mr B was interested in investing. He's told us that work colleagues recommended he start trading and helped him set up an account with a crypto currency exchange company. Mr B has said his boss suggested to him that he get some investment advice, and so he did some research online and came across an investment company.

Mr B has said he checked the investment company on a review platform, and didn't see anything that concerned him. So he went ahead to deal with the investment company, who had told him they would invest on his behalf, to make better returns. But unknown to him at the time, he was dealing with fraudsters.

The fraudsters gained remote access to Mr B's computer and helped him to set up a trading platform, which Mr B was able to access and see how his investments were performing. The fraudsters instructed Mr B that he should pay money into the cryptocurrency account, which he had set up in his own name with his work colleagues, and from there he should convert it into cryptocurrency. With the remote access the fraudsters had, they were able to move the cryptocurrency onto the trading platform, which the fraudsters controlled.

The initial payment Mr B made, for £250, appeared to double in value within a day. Mr B has said the fraudster spoke about his own investments and came across as knowing what they were talking about. Mr B was shown examples of rising investments across a number of commodities, which persuaded him further. He's said he was told the more he invested, the more profit he could make. Persuaded by what he was told, Mr B increased his investments and made a card payment for £5,000 to purchase a bitcoin, from what appears to be a different crypto exchange. A week after this, the trading platform indicated Mr B had made a profit of £25,000 within the week.

Still believing everything to be genuine, Mr B continued to invest further amounts, which included taking out a loan to fund the investments. He has said the fraudster would call him once or twice a week, with trades being set up through a remote desktop application. Mr B says at one point, he was told that a further investment of £25,000, would lead to him being entitled to receive a bonus, from the investment company, of £30,000. The investments continued until Mr B's trading platform indicated that he had a balance of nearly half a million pounds.

Towards the end of August 2020, the fraudsters told Mr B that the value of his investments were falling. He's said he was told he needed to make a payment of £10,000 as a fee to hedge his investments. Mr B went ahead and made the payments as requested. But

following this, the fraudsters didn't contact him and it started to become clear to him that he had been scammed. In total Mr B suffered an overall loss of £199,079.64 as a result of the scam.

Mr B raised the matter with HSBC and it issued its final response on 8 October 2020, not upholding his complaint. In summary it said while it acknowledged Mr B's frustration, it had processed the payments in line with Mr B's request. It didn't consider there had been an error made in processing the payments and thought this was a civil matter between Mr B and the cryptocurrency exchange company he had set up an account with. It did try and recover funds from the beneficiary accounts (the accounts to which the money was sent), but only £0.86 was recovered, which was returned to Mr B.

Unhappy with HSBC's response, Mr B then brought his complaint to this service. One of our investigator's looked into things and upheld the complaint in part. In summary, this was because she thought the payment Mr B made for £5,000, on 16 July 2020, wasn't comparable to his typical account activity and was out of character. Because of this our investigator thought HSBC should have been concerned and ought to have questioned Mr B before processing the payment. She thought that had HSBC questioned Mr B further, it would have become apparent that he was falling victim to a scam and it would have prevented him from making the payment. So she thought HSBC should be held liable for the loss.

Our investigator went on to consider whether Mr B had acted reasonably in the circumstances and whether he too should carry some responsibility for his loss. She thought he should. In summary, she said this because she thought there was enough going on that Mr B should have acted more cautiously before proceeding with the investment.

Overall, our investigator thought liability should be equally shared across both parties, from the point Mr B made a card payment for £5,000 on 16 July 2020 (our investigator provided a detailed breakdown of the relevant transactions in her view). Alongside refunding 50% of Mr B's loss from this point (less any money already credited to Mr B's account), our investigator's view was that HSBC should also pay interest on the amount it was being asked to refund (at the same rate Mr B was receiving on his HSBC account). Our investigator also thought HSBC should pay Mr B £200 for the distress and inconvenience he'd been caused, by how HSBC had dealt with matters when he reported the scam.

Our investigator issued her view of the complaint on 9 August 2022, giving both parties the opportunity to respond by 23 August 2022. Mr B responded and accepted the view. HSBC responded on 17 August 2022 and asked for an extension until 30 August 2022, which our investigator granted, but HSBC did not respond.

She contacted HSBC again on 31 August 2022, letting it know that the complaint would be passed to an ombudsman for consideration. That email had a deadline of 14 September 2022. On 2 September 2022, HSBC requested a further extension until 19 September 2022. Our investigator granted this, but again no response was received. On 21 September 2022, HSBC asked for a further extension of seven days. Our investigator agreed, and asked HSBC to respond by 28 September 2022. But HSBC did not respond by this date.

Because HSBC hasn't responded to the Investigator's view or any follow up correspondence, the complaint has been passed to me to consider and issue 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.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from HSBC, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the Investigator's opinion.

I think that, taking into account its obligations to protect customers from financial harm from fraud as well as what's fair and reasonable in the circumstances of this complaint, HSBC ought to have intervened, at the point Mr B was making a card payment for £5,000 on 16 July 2020.

Given this payment was out of character and not in line with Mr B's typical account activity, I think HSBC ought to have had concerns about it. I'm satisfied that had HSBC intervened it would have been able to identify that Mr B was at risk of financial harm from fraud. I say this as the circumstances had several hallmarks of this type of scam, including the fact that the fraudsters had gained remote access to his computer, he was being offered returns that were too good to be true and he was being asked to pay fees in order to release his funds. So, the loss would have been prevented.

For broadly the same reasons as our investigator gave in her view, I also consider that Mr B should share liability for this loss. I'm persuaded that, on balance, there was enough going on that ought to have reasonably led him to adopt a more cautious approach to the payments he was making. I say that as Mr B was an inexperienced investor and was investing substantial sums of money, on the basis of promised returns that seemed too good to be true.

Finally, I think that HSBC should pay additional compensation of £200 to reflect the distress and inconvenience it caused Mr B, with the difficulty he had in reporting the scam. I can understand how these difficulties would have compounded, what was already a worrying time for Mr B.

Putting things right

HSBC should now;

- Refund Mr B 50% of his loss, from and including the card payment he made on 16 July 2022, less any credits he received from this point (being £99.067.07 to refund).

- Pay interest on this amount, at the same rate of his HSBC account (from which the majority of the payments were made). This should be paid from the date of transactions to the date of settlement.
- Pay Mr B £200 for the distress and inconvenience cause.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2022.

Stephen Wise
Ombudsman