

## **The complaint**

Mr S is unhappy that HSBC UK Bank Plc ("HSBC") didn't reimburse him after he was the victim of a scam.

## **What happened**

In May 2020 Mr S has said he came across an article in a national newspaper about cryptocurrency investment. He contacted one of the companies he said was recommended in the article to enquire about making an investment and agreed he would use their services. Unfortunately this company turned out to be scammers.

The scammers provided Mr S with access to an online account that they said would show him the performance of his investment. They persuaded Mr S to open accounts in his name with several crypto currency trading platforms so he could deposit his money there and which they had full control of. Mr S had no direct access to the accounts themselves or his money once he had transferred it.

On 2 June 2020 Mr S made a payment of around £850 which he believed was his first investment. This showed a profit of £100 very quickly and this profit was sent back to Mr S. This reassured him the investment was legitimate and he proceeded to make a payment of £8,324.41 on 5 June 2020 and of £32,499.08 on 12 June 2020. A few days later, the account he'd been given by scammers showed him a balance of around £100,000.

Mr S was told by the scammers the large profit he'd made was raising suspicions with regulators overseas because they'd been trading without enough leverage. They said the money was blocked but if Mr S made a further investment of £20,000 the percentage of profit would be lower. This would 'unfreeze' the account and allow them to return the money within two months. Mr S made a further payment of £16,112.61 on 23 June 2020, £10,000 of which he'd obtained by taking out a loan.

When the money was not returned to Mr S and the scammers stopped responding to him he realised he'd been the victim of a scam. He contacted HSBC but it didn't feel it was liable for Mr S's loss. Mr S was unhappy with this and brought the complaint to our service.

I issued a provisional decision in this case. In summary I said that:

- The payments Mr S made to scammers were authorised under the Payment Services Regulations (PSRs) and the terms and conditions of his account. So as a starting point Mr S was presumed liable for them. But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I felt HSBC had an obligation to be on the look out

for indications its customers might be at risk of a scam. I also felt where appropriate it ought to intervene and carry out further checks where a risk was identified and in some cases refuse to make the payments altogether.

- HSBC confirmed the payment made on 5 June 2020, for £8,324.41, did prompt it to intervene. It contacted Mr S to ask him more about the payment before it was made. And I thought this was reasonable. This was the first payment I thought it ought to have recognised as unusual.
- Whilst HSBC did ask Mr S some questions about the payment, I didn't think it went far enough in questioning him about this. It didn't ask any probing questions I would've expected in order to establish whether or not he was at risk of a scam. And had it questioned him sufficiently, even by asking what the payment was for or who it was to, I thought it likely would've uncovered he was the victim of a scam. I said this because I thought it would've become clear he had no experience in this area, didn't have control over the platforms he was making payment to, had been guaranteed no loss and hadn't carried out any due diligence to check the company he was dealing with was legitimate. The FCA (Financial Conduct Authority) had also already issued a warning before Mr S made his first payment as part of the scam and I would've expected HSBC to have checked this. Had it done so, I thought it could've informed Mr S he was likely the victim of a scam and it would've been prevented.
- But, I also thought Mr S shared liability for his loss in this case. I said this because all the information I could find online from the time Mr S searched for the company indicated it was a scam risk. He hadn't been provided with any paperwork as I thought you'd expected when entering into an arrangement with a professional advisor, he wasn't given any details around the company's role, or any detail around how the investment worked. I also thought it ought to have concerned him that he was being guaranteed no loss even though he was investing in a highly volatile and unregulated area. He also set up crypto currency trading accounts with three separate platforms and handed control of the accounts over to scammers, seemingly without explanation as to why he needed to do this. And although I could see he had received £100 back from the scammers, I didn't think this relatively small amount ought to have convinced him to start investing so much more given the other concerning factors.
- Overall, I did take into account that Mr S was involved in a new area of investment to him and I understood he thought he was relying on a professional. But I also thought he took an unreasonable risk in sending over £40,000 to individuals he essentially had been unable to verify in any way and in spite of the various concerning factors that came up before he'd sent his first payment to them.
- I could see HSBC did make attempts to try and recall the funds from the international banks Mr S paid although it didn't do this immediately as I would've expected. But I could also see that the receiving banks either failed to respond altogether or refused to return any funds if available. And I didn't think it was likely this response would've been different had HSBC tried to contact them sooner given it had been between 10 days and 10 months since the payments were made and given that international banks aren't subject to the same obligations as a UK bank would be.

- I initially asked HSBC to reimburse Mr S for 50% of his loss plus interest but didn't feel it needed to reimburse him for the interest he'd paid on the loan he'd taken out to fund some of the payments to the scammer. However, upon reconsidering this I felt HSBC should be liable for 50% of the interest on the loan Mr S took out and clarified this point to both parties before proceeding to issue my final decision.

HSBC responded to the provisional decision and said it didn't accept my findings but would be prepared to offer Mr S the redress I had recommended as a gesture of goodwill. Mr S responded and confirmed again that he hadn't seen the warning issued by the Financial Conduct Authority before he made the payments. But he later responded again and accepted 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.

As neither HSBC or Mr S provided any further evidence or submissions for me to consider in this case my decision is in line with my provisional decision, which I've summarised above. I think HSBC and Mr S share responsibility for Mr S's loss.

### **Putting things right**

Mr S paid a total of £56,936.10 to scammers, £10,000 of which was funded by a loan he took out with a third party provider. HSBC is liable for 50% of this loss (£28,468.05).

- £46,936.10 of the money Mr S paid to scammers came from his savings account with HSBC. HSBC should reimburse him for 50% of this (£23,468.05) plus interest at the account rate from 6 July 2020 (the date HSBC appears to have concluded its investigation into Mr S's scam claim and reasonably ought to have refunded part of the loss) to the date of settlement.
- £10,000 of the money Mr S sent to scammers was funded by a loan he took out with a third party company. He had repaid this loan in full in October 2021. HSBC should reimburse Mr S 50% of this loss (£5,000) plus interest:
  - It should refund 50% of the total loan repayments Mr S has made, which includes 50% of the interest applicable to these payments;
  - It should add interest at the rate of 8% simple per annum to each repayment from the date it was made to the date of settlement to reflect the time he's been deprived of the funds.

### **My final decision**

I uphold this complaint and require HSBC UK Bank Plc to pay the redress outlined above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 October 2022.

Faye Brownhill  
**Ombudsman**