

The complaint

Mr D is unhappy that HSBC UK Bank Plc failed to do more to protect him when making payments as a result of a fraud. He would like HSBC to reimburse the funds lost.

What happened

Mr D met a third-party via an online dating platform. Eventually they exchanged telephone numbers and began speaking via a messaging platform.

While getting to know each other, the third-party disclosed that they were a successful cryptocurrency investor. They began showing Mr D their successes and persuaded him to get involved.

He was instructed to download an online investment platform and started paying smaller sums into the account. Initially, Mr D started with a £1000 investment, paid via his HSBC account. This saw good returns in a relatively short period of time: and these were paid back to Mr D.

Convinced that the investment was legitimate, as he'd seen returns, Mr D continued to invest a further £35,500 in multiple payments from his HSBC account over the course of two months. Initially, Mr D did receive some returns back. But when he attempted to make his final withdrawal from the online investment platform, he was informed his account had been suspended.

Mr D made contact with the investment platform and was told he'd have to pay a number of fines and taxes to withdraw the balance locked in the account. Mr D became suspicious and carried out some research – eventually realising he'd fallen victim to a fraud. So, he reported it to HSBC.

HSBC looked into Mr D's claim but declined it. It pointed out that as Mr D had paid a genuine cryptocurrency wallet that was legitimately held in his name, it wouldn't treat the matter as fraud from the point he paid the money from his HSBC account.

Mr D, unhappy with this response, referred his complaint to our service where it was reviewed by an Investigator. After considering the evidence provided by both parties, the Investigator concluded that HSBC could have done more to protect Mr D. Broadly, the Investigator highlighted that the fifth payment made to the cryptocurrency platform for £9,000 ought to have caused HSBC some concern. The Investigator felt that had HSBC intervened, it likely could have broken the spell of the fraud and prevented any further payments. They also considered if Mr D contributed to his loss through negligence: but felt he hadn't.

The Investigator recommended that HSBC refund Mr D all payments made from the £9,000 payment: totalling £24,500 (plus 8% simple annual interest). They also recommended it pay £150 for the distress and inconvenience caused from not treating the matter as fraud.

HSBC disagreed for a number of reasons. Some of these include, but are not limited to:

- The scam took place at the point in which Mr D transferred his funds from his cryptocurrency wallet and not from the point he'd transferred funds from his HSBC account.
- Even had it intervened in the payment(s), it wouldn't have prevented the fraud. Mr D was taken in by the fraud and had received returns.
- Mr D's employment and investment experience ought to have prompted him to carry out more research on the investment and platform.
- Mr D ignored obvious red flags regarding the place he'd been introduced to the third-party and the fact he'd never met them face to face.
- It felt the returns received by Mr D should be taken into consideration with any redress.

As HSBC disagreed with the Investigator's assessment and recommendations, the matter was passed to me for a decision. On the 11 November 2022 I issued provision findings to both parties, these were set out as follows:

'It's common ground here that Mr D authorised the payments in dispute. He was duped by the fraudsters into making the payments to his cryptocurrency wallet and sending this on to the fraudsters. I accept that these were authorised payments even though Mr D was the victim of a fraud. And although he didn't intend the money to go to fraudsters, he is presumed liable for the loss in the first instance.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- *Have been monitoring accounts, and any payments made or received, to counter various risks, including money laundering, countering the financing of terrorism and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk (among other things). This is particularly so given the increase in sophisticated fraud and scams, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make the payment altogether. To help protect customers from the possibility of financial harm from fraud.*

Were the payments Mr D made unusual or out of character?

As I've highlighted above, banks are expected to be on the lookout for out of character and unusual transactions that may indicate a customer is at risk. However, it must also balance this against its obligation to process payments in line with its customer's instructions and the terms and conditions of the account. I acknowledge that this can at times be a difficult balance to strike.

When considering Mr D's account activity, I'm minded to agree with the Investigator's conclusions that at the point Mr D made the £9,000 payment, it ought to have reasonably been concerned. Mr D regularly made bank transfers and card payments for over £1,000 from his account. And he'd even previously made transfers—albeit less frequently—for over £2,000. So, I don't think the initial card payment for £1,000, or the subsequent faster payments of £4,000 and £3,000 were particularly unusual when comparing this to Mr D's normal account activity.

However, at the point Mr D had made the £9,000 payment, this saw a sudden and sharp

increase in his normal account expenditure. And, at this point, he'd made a substantial number of payments to a cryptocurrency platform (circa £17,000) over the course of less than a month. This was also not a payee Mr D had transacted with prior to this activity.

Would intervention have prevented the fraud?

HSBC has made valid submissions that Mr D was clearly taken in by the fraud. Having looked through the messages between Mr D and the third-party, it's clear that they worked slowly to gain his trust and weren't too pushy in him participating in the cryptocurrency trading at first.

It's also important to point out that Mr D had received 'returns' from the investment; another factor that no doubt brought a sense of legitimacy to it. But these factors also impress the importance and impact that intervention can have in breaking such spells.

Had an intervention taken place, there were some clear red flags here that HSBC likely would have identified and pointed out to Mr D. Mr D wasn't an experienced cryptocurrency investor. And without evidence to the contrary, hadn't been victim to any form of investment fraud before. I think a professional body—such as HSBC—highlighting some of the red flags present would likely have made Mr D take a step back and look into things more. I think this likely would have caused him to question what he was doing and broken some of the sophisticated social engineering tactics he'd been subjected to: such as receiving 'returns'.

Mr D's circumstances shared a number of commonalities with a well-known fraud method, and I'm minded to say that HSBC likely would have identified this through intervention and Mr D disclosing the circumstances surrounding it.

For the above reasons, I'm minded to say that on the balance of probabilities HSBC likely would have been able to prevent further payments had it intervened and provided effective warnings and advice on these types of frauds.

Should Mr D bear some responsibility for his loss?

While I feel HSBC could have likely prevented the fraud from continuing, I'm also minded to say that Mr D should bear equal responsibility for his loss.

Having read the messages between Mr D and the fraudster, I think Mr D ignored red flags, and, at times, his own instinct about the validity of the 'application' he'd downloaded.

HSBC has made submissions that Mr D was effectively placing his trust in a person he'd never even met. But the circumstances around their virtual meeting were coincidentally in line with the pandemic and restrictions that prevented people outside of their own support bubble to meet up. The fraudster clearly preyed on these circumstances to justify why they were unable to meet Mr D. However, there were occasions before restrictions began, and during breaks in these restrictions, where they were able to meet. And despite Mr D's attempts to arrange this, these requests were either ignored in the chat or excuses were made as to why it wasn't possible.

I'm also minded to say that Mr D carried out little to no research on the company prior to deciding to invest. Mr D says that he thought the business was legitimate as the application did bear the name of a genuine overseas based bank. But I don't think it's likely Mr D researched this business until after he realised he'd been defrauded.

Throughout the chat Mr D had with the fraudster, neither party referred to the genuine bank Mr D thought the app related to. Instead, it was referred to as an acronym of the genuine

bank. I think it's likely had Mr D thought this application related to the genuine bank, he, or the fraudster, would have mentioned this in the chat. I also don't find it likely he would have asked the application's customer services how long the business had been operating for.

Furthermore, basic research on the website of the genuine bank shows that they have an application for download on the app store Mr D used and trusted. So had any basic research taken place, it's likely Mr D would have spotted this and questioned the legitimacy of the application he was asked to download.

I'm also minded to say that Mr D ignored further red flags such as:

- A circa 10% bonus for amounts topped up on the account was offered as part of a promotional package for investing. I'm minded to say this was unrealistic and should have struck Mr D as too good to be true.*
- Mr D eventually ignored his initial instincts regarding the application not being safe considering it wasn't available within the legitimate application store he normally used; this indicated a lack of trust in the investment platform overall.*

For the above reasons, I'm minded to say that Mr D was equally responsible for his loss and should therefore take responsibility for half the funds HSBC likely could have prevented being paid. I mean no discourtesy to Mr D in this assessment as I acknowledge he was victim to a sophisticated and cruel scam, but I must be fair to both parties and acknowledge where he could have done more to ensure he was dealing with a legitimate business.'

Both parties were given until 25 November 2022 to provide any further comments and evidence in response to the provisional findings.

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 both parties have responded before the deadline set, I'm now in a position to issue my final decision on this matter.

Both Mr D and HSBC have both responded to my provisional findings stating that they have nothing further to add. I therefore see no reason to depart from the findings set out in my provisional decision and have nothing further to address or add.

Putting things right

HSBC should now go ahead and refund the payments made from the £9,000 payment on 24 January 2021. This totals £24,500. But it should deduct 50% from this to reflect the contributory factors I've mentioned above. I also agree with HSBC that Mr D's 'returns' should be taken into consideration here.

Prior to the £9,000 payment, Mr D had made a number of withdrawals from his cryptocurrency wallet to his HSBC account from the 'returns' he'd purportedly made. As both parties are in agreement that this matter was a fraud, I don't think it's reasonable that Mr D should benefit from the fake 'returns' he received from the fraudster.

I've calculated the payments to and from his cryptocurrency wallet and note that Mr D benefitted from £466.79 in 'returns'. This should also be deducted from the total amount reimbursed. This equates to a total of £11,783.21 to be reimbursed.

HSBC could have likely prevented the payments from taking place: so it should include interest from the point of each payment. Mr D has told our service that £1,500 of the funds he'd sent were funded from a loan from a family member. As Mr D wasn't deprived of his own funds here, I don't think an interest award is appropriate. This amount was transferred to his account on 2 February 2021. But HSBC should pay 8% simple annual interest on the remaining funds that Mr D lost from the date of payment, to the date of settlement.

I've also considered if HSBC should pay the £150 compensation payment recommended by the Investigator for the distress and inconvenience caused. I think it's important to highlight that a vast majority of the distress and inconvenience caused to Mr D here has ultimately been caused by the person committing the fraud against him. But I do agree that HSBC could have handled Mr D's claim better in acknowledging him as a victim. It did address this in a further response dated 8 April 2021. But I do think it should have offered compensation to reflect this error and the impact caused.

Mr D was already distressed by the situation he'd found himself in – and this no doubt exacerbated the impact caused. Therefore, I feel the £150 suggested by the Investigator as compensation for this is fair and reasonable in the circumstances.

My final decision

For the reasons I've given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Refund Mr D £11,783.21 of the funds lost.
- Apply 8% simple annual interest from the date of each payment to the date of settlement – with exception of £1,500 from the final two payments.
- Pay £150 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 December 2022.

Stephen Westlake
Ombudsman