

## The complaint

Mr K complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him from loss when he became the victim of a scam and wants HSBC to pay him back the money he lost.

## What happened

Mr K was contacted by telephone by someone pretending to be from a genuine investment company. They appeared to know that he had previously been a victim of a scam and offered to help him recover his money.

He was manipulated and persuaded into paying the scammer. Mr K made four payments totalling £56,999.96.

Once Mr K realised he had become the victim of a scam, he contacted HSBC to make a complaint.

HSBC initially agreed to refund 50% of the third and fourth payment. Mr K wasn't satisfied, so he brought the complaint to this Service.

HSBC then agreed to refund 50% of the first two payments.

Our Investigator considered the complaint and thought that it should be upheld – but with a 25% deduction for contributory negligence rather than the 50% deduction offered by HSBC.

Mr K accepted this, but HSBC did not, so the complaint has been passed to me to make 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.

### *Was Mr K the victim of a scam?*

It isn't in doubt here that Mr K was the victim of a scam. He was contacted out of the blue by an individual offering an investment opportunity – the scammer persuaded Mr K to download a computer programme purporting that this could be used to 'show' Mr K how to trade online. This is not normal for a regular investment.

I've listed the payments that were made below.

Date	Payment type	Payee	Amount
7 May 2019	Faster Payment	B	£7,000

7 May 2019	Faster Payment	B	£4,999.66
29 May 2019	International Faster Payment	B	£21,000
29 May 2019	International Faster Payment	B	£24,000

#### *Did Mr K authorise the payments?*

In line with the Payment Services Regulations 2017 (PSRs), Mr K isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe. Accordingly, I've considered whether Mr K authorised the payments – and so, whether he made the payment himself or whether he gave someone else permission to do this on her behalf.

I am satisfied that on balance, Mr K did authorise the payments that were made. The PSR's state that consent is given when a customer uses the steps agreed for making a transaction – and it's also possible to provide consent for someone to act on your behalf. Mr K allowed the scammer access to his computer in order to make the payments – so I think that they were authorised.

#### *Recovery of Mr K's payments*

After the payments had been made, I wouldn't expect HSBC to do anything further until it was notified of the scam.

However, I don't think that there was anything that HSBC could have done to recover the payments as Mr K didn't report the scam until a year after the payments had been made – so the funds would very likely have already been moved on.

HSBC initially offered to refund 50% of the thirds and fourth payment made under the Contingent Reimbursement Model (CRM) – but this was actually in error as the CRM doesn't apply to the type of payment made. It did explain that it didn't intend to withdraw this offer when it realised it had made a mistake. However, although the CRM doesn't apply here, this isn't relevant anyway as I think HSBC should have prevented the payments in the first place, which I will now explain.

#### *Should HSBC have reasonably prevented the payments in the first place?*

I can only uphold this complaint if I think that HSBC reasonably ought to have prevented some or all of the payments Mr K made in the first place – therefore preventing the loss before it happened.

Mr K authorised the scam payments in question here – so as I've explained above, he is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, HSBC should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Been monitoring accounts – including payments made and received – to counter various risks including anti-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 its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, I've carefully considered what this means for the payments in question here.

Having done so, I think that HSBC should have intervened from the first payment that Mr K made. I'll explain why.

Mr K didn't use the account the payments were made from very often – and while he had made some higher value payments, the amount of the first payment should've triggered a response from HSBC. The largest payment Mr K had made in the year leading up to the scam was for £5,500 – which was a transfer to his own account. This transaction was much higher at £7,000 which was an unusual amount for Mr K to pay – and to a new payee. I think that this was highly unusual and uncharacteristic for Mr K, and should have warranted an intervention from HSBC.

Had HSBC contacted Mr K, at this point, I would've expected it to have questioned him about the payment – including what the payment was for, and the surrounding context – and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

I've seen nothing to suggest that Mr K had been coached, or told to lie about the payments he was making – so I think that had HSBC acted as I would've expected, it would quickly have uncovered what was going on.

Mr K has been contacted out of the blue by phone – by someone offering investment opportunities who had persuaded him to allow them remote access to his computer. This would've been a major red flag to HSBC – and it should have told Mr K about its concerns.

Had it warned him appropriately, I don't think that Mr K would've continued with the payment and the loss could've been prevented.

I understand that HSBC spoke with Mr K when he initially tried to make the third and fourth payments – but there's not enough for me to say that Mr K was given a meaningful warning at this time – HSBC has only provided a note to say that Mr K would need to visit a branch with ID to re-set his account. So, I'm unable to conclude that he was given a warning and ignored it. On balance, I'm not persuaded Mr K was given a meaningful warning and so I think HSBC missed an opportunity to appropriately intervene.

*Should Mr K bear some responsibility for the loss?*

While I do think that HSBC should have prevented the first payment I do also need to consider if Mr K should bear some responsibility for the loss by way of contributory negligence.

As I've explained above, the scammer initially contacted Mr K as he had previously been a victim of another scam – and while I understand that he says he took steps to research the business he thought he was investing in, I do think that he should have applied more caution here and done more thorough research into what the scammer was asking of him – and the unlikely returns he was being offered. Effectively, he was already 'on notice'.

Some of the things that the scammer was asking of Mr K were not usual for a legitimate investment – such as allowing access to his computer via Anydesk, and the promise of implausible levels of return. Mr K did do some research, and the scammer did supply him with what he says was persuasive 'proof' that he was investing with a genuine company. However, I don't think that Mr K went far enough in checking the information that the scammer provided to him. Had Mr K looked deeper into the apparent FCA regulation of the 'business' I think he would have realised that the scammer was not being honest with him – and it was likely to be a scam.

That said, HSBC were the experts here – and had more knowledge on the intricacies of these types of scams, whereas Mr K was a lay-person in such matters. So, I think that it should bear more responsibility for what happened here.

As such, I feel that a deduction of 25% of Mr K's total loss is appropriate.

### **Putting things right**

I understand that HSBC has already refunded Mr K 50% of his total loss – if it has not done so, it should do so now.

On top of this, HSBC should also now refund a further 25% of Mr K's total loss to him.

I calculate this to be £14,249.99.

This brings the total refund HSBC should pay Mr K to £42,749.97.

HSBC should also pay Mr K 0.25% interest on the total refund which is the interest rate for the savings account that funded the transactions, less any tax lawfully deductible.

### **My final decision**

I uphold this complaint with a 25% reduction in compensation for contributory negligence.

HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 April 2023.

Claire Pugh  
**Ombudsman**