

## The complaint

Mr F complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he lost as the result of a scam.

Mr F is being represented by a third party, to keep things simple I will refer to Mr F throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary Mr F's wife Mrs F had started to invest with a business called Investing Views (X) having found the business online. Mrs F was able to see her investment growing on the online platform X had provided her access to.

Having seen the profit Mrs F was making Mr F decided to also make an investment. Mr F tells us he had already carried out some research on X that included checking the FCA website but that there was no adverse information available.

Already convinced by the positive experience Mrs F had investing with X, Mr F was comfortable investing with it. Mr F contacted X and moved forward with his investment often helped by X using the screensharing application AnyDesk. As with Mrs F, Mr F was able to see his investment via the platform X provided.

Mr F made the following payments to X via the cryptocurrency exchange Foris Dax:

1. 16 August 2021 - £5,000
2. 19 August 2021 - £500
3. 25 August 2021 - £4,500
4. 13 September 2021 - £5,000
5. 15 September 2021 - £2,500
6. 21 September 2021 - £110
7. 24 September 2021 - £150
8. 24 September 2021 - £250
9. 29 September 2021 - £9,000
10. 8 October 2021 - £10,000
11. 11 October 2021 - £2,000
12. 11 October 2021 - £2,500
13. 11 October 2021 - £100

Mr F was able to make some small withdrawals from the investment with X which increased his confidence that X was a legitimate business.

Although when Mr F decided he wanted to make larger withdrawals X told him he would have to make further deposits first. Initially Mr F thought this was reasonable but soon realised he had fallen victim to a scam.

Our Investigator considered Mr F's complaint and thought it should be upheld. In summary he said that HSBC should have realised the payments Mr F was making into the scam were unusual when compared to his normal spending habits and that it should have stepped in when Mr F made his first payment of £5,000 on 16 August 2021.

Our Investigator thought that had HSBC stepped in at the time it would have been able to prevent the scam from taking place. So, it should refund all the payments Mr F made.

HSBC disagreed, so this complaint has been passed to me to decide.

### **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.

#### *Contingent Reimbursement Model (CRM)*

Mr F made the payments to X via the method of transfer. I understand that Mr F feels his payments in relation to the scam should be refunded in accordance with the CRM. But the CRM does not apply when payments are made to an account held in the same name as the person making the payment. As Mr F made all the payments to an account in his own name at Foris Dax before the funds were sent to the scammer the CRM wouldn't apply in this scenario.

#### *Should HSBC have reasonably prevented the payments Mr F made?*

Mr F has accepted he authorised the payments he made to Foris Dax, so the starting point here is that Mr F is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Mr F was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The first payment Mr F made was for £5,000 via transfer to a new payee Foris Dax, a cryptocurrency exchange. I have looked at the history of Mr F's account leading up to this payment and can see this type of payment was unusual compared to his usual spending habits. Mr F had not made payments of this size via transfer leading up to the scam and had not paid money to a cryptocurrency exchange either.

Considering the uncharacteristic activity on Mr F's account, and that HSBC should have been aware at the time of Mr F's payments the FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. I think it would have been reasonable for HSBC to step in and have a meaningful conversation with Mr F about what this payment was in relation to.

Had HSBC questioned Mr F about the payments he was making I see no reason why Mr F wouldn't have been honest about what the payment was for and how it had come about. As the scam had characteristics of common scams at the time including the transferring of funds through cryptocurrency exchanges, and the use of a screensharing applications I think it's likely HSBC would have uncovered the scam and prevented any payments being made into it.

From the information provided by HSBC I can see that Mr F would have seen a scam warning when he made the payments. But this warning was a generic warning that didn't cover the circumstances of the scam that was taking place, so I don't think the warning was significant enough to warn Mr F that he was likely being scammed.

As I think HSBC should have stepped in when Mr F made the first payment of £5,000 on the 16 August 2021, and that it could have prevented the scam taking place if it had, I think HSBC is responsible for all of Mr F's loss.

*Did Mr F contribute to his loss?*

I think this was a sophisticated scam and Mr F couldn't have reasonably foreseen that he was dealing with a scammer. Mr F was able to see balances on his trading account with X, and I don't think he could have reasonably known that the trading balance was likely fake or a simulation – unless prompted by his trusted bank.

Mr F has also explained that he had previously carried out some checks on X that appeared to show there was no risk associated with it. This included a search on the FCA website. As no warnings were published about X at the time, I think this would only have increased Mr F's belief that X was legitimate.

Overall, I don't think Mr F contributed to his losses, so I don't suggest the overall settlement be reduced.

### **Putting things right**

I've explained why I think, if HSBC UK Bank Plc had done what it reasonably ought to have done, Mr F would not have lost any money to the scam.

HSBC UK Bank Plc should therefore refund the total amount Mr F made into the scam via Foris Dax (less any refunds previously received).

To compensate Mr F for having been deprived of this money, HSBC UK Bank Plc should also pay Mr F interest on the loss at 8% simple per year, calculated from the date of loss to the date of settlement.

### **My final decision**

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 May 2023.

Terry Woodham  
**Ombudsman**