

The complaint

Mr O complains that HSBC UK Bank Plc (“HSBC”) won’t refund money he lost when he fell victim to an investment scam.

What happened

Mr O says he was recommended an investment broker, AssetShot, by a friend and a relative who had both been using its services for some time and making good returns. He had relocated abroad and had funds from a house sale that he intended to use to buy a house in his new country of residence.

Mr O checked Trustpilot reviews and agreed to speak to a representative of AssetShot. He was told he could make some profit by speculating on the price movement of assets using their broker’s expert advice. Mr O says they didn’t mention a specific rate of return. He was persuaded to set up a trading account with AssetShot and wanted to see if he could make some additional money in the short term for the house deposit.

Mr O downloaded a remote access software under his account manager’s instructions so that they could trade together. To facilitate trading, Mr O sent money from his HSBC account to a crypto wallet in his name with a legitimate cryptocurrency exchange. He then watched as his account manager transferred the cryptocurrency into his trading account with AssetShot before placing the trades.

Mr O made two payments from his HSBC account in connection with this investment – an initial deposit of £23,000 on 20 October 2021 and a further £46,500 on 2 November 2021 after seeing the profits being made on his trades. He says he realised something wasn’t right when his friend and his relative had trouble making a withdrawal.

Mr O also attempted to make a withdrawal and was told that he needed to pay a 30% fee for the funds to be released. He sent £4,953.21 to the cryptocurrency exchange on 25 November 2021 in relation to this but it didn’t appear in his wallet. Mr O was subsequently notified that his crypto wallet had been closed and £4,749.07 was returned to his HSBC account on 9 December 2021.

Mr O reported the matter to HSBC shortly after and it contacted the beneficiary bank to request a recall. But it didn’t hear back. HSBC refused to refund the payments and said that Mr O had authorised them.

Our investigator upheld Mr O’s complaint. They thought that the very first payment ought to have triggered HSBC’s fraud detection systems and it should have questioned Mr O about it. And had it done so, his loss would have been prevented. The investigator initially recommended the first two payments to be refunded along with interest, but subsequently asked HSBC to include the third payment *minus* the funds already returned when they realised that the amount the crypto exchange returned to Mr O wasn’t the same as that he’d sent. The investigator also clarified that they didn’t think Mr O should share some of the blame for what happened.

Mr O accepted the investigator's findings, but HSBC didn't. So, the matter has been escalated 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.

Although I've only summarised the background and arguments above, so not everything that happened is detailed, I'd like to reassure Mr O and HSBC that I've read and considered everything in its entirety.

Not every complaint referred to us and categorised as a binary-options, contracts for difference ("CFD") or foreign exchange scam is in fact a scam. Some complaints simply involve high-risk investment 'bets' on the performance of commodities, cryptocurrency or stocks that resulted in very disappointing returns or losses. Some traders promoted these products – which were not regulated by the Financial Conduct Authority ("FCA") or its predecessor at the time – using sales methods that were arguably unethical and/or misleading.

However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e., *dishonestly* making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other payment services providers have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they don't have to protect customers against the risk of bad bargains or give investment advice — but the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor's 2012 consultation paper on investment fraud).

I first need to consider whether AssetShot was a legitimate trader. Given the information I've found during my research, I'm satisfied that it wasn't. I say this because:

- On 16 November 2021, nearly four weeks after Mr O made the first payment, the FCA published a warning that AssetShot was offering financial services in its jurisdiction without authority.
- On 2 February 2022, a warning about AssetShot was published on the Investor Alerts Portal of the International Organisation of Securities Commissions ("IOSCO") by the Financial Services and Markets Authority in Belgium.
- I'm also not aware of AssetShot being regulated in any other jurisdiction. This indicates that it was operating illegally, probably with dishonest intentions. Legitimate businesses tend to submit themselves to regulatory oversight.

Duty of care

It isn't in dispute that Mr O authorised the disputed payments. They were requested by him using his legitimate security credentials provided by HSBC. Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an

authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

The payments Mr O made weren't sent directly from his bank account to AssetShot. All payments were made via another account in his name with a crypto exchange which I understand he had control over. Under these circumstances, the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which requires signatories such as HSBC to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn't apply.

While I find the CRM Code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

I've considered that the disputed payments were sent to a legitimate crypto platform. I accept that buying cryptocurrency is a legitimate exercise. But both the FCA and Action Fraud had warned of crypto exchange and forex trading scams in 2018. And in May 2019, Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something that regulated businesses, including HSBC, ought to take notice of.

So, even though Mr O was transferring funds to a crypto account in his name, HSBC ought to have been on the lookout for unusual and out of character transactions. While the transfers were made to his own wallet, scams involving transfers to crypto accounts were well known to banks by this time and I therefore think that where payments were also out of character, potential losses were foreseeable to the originating bank.

I've considered the operation of Mr O's account in the year leading up to the disputed payments. The initial transaction amount of £23,000 was substantially higher than other transactions on his account. It was nearly two and a half times higher than the largest payment Mr O had made on his account in that period. Given the amount involved, and the fact that the payment was to a known crypto platform, I consider that it would have been reasonable for HSBC to have properly questioned Mr O before executing his authorised instruction.

Even if he had been sending money to a legitimate crypto platform, it didn't follow that Mr O's money was safe, or that he wasn't at risk of financial harm due to fraud or a scam. By the time Mr O made the payments, I think HSBC had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

Had HSBC done more and warned Mr O about cryptocurrency scams, I've no reason to doubt that he would have explained the true purpose of his payment. I can't see that Mr O had been given a reason to think he had to hide this information from his bank. Neither had he been coached to tell them something different. I'm satisfied that Mr O would have looked further into the investment opportunity in general, including whether the broker he'd been dealing with was regulated here in the UK or abroad. He could have discovered that it wasn't. Indeed, it's likely that Mr O would have come across the various warnings about cryptocurrency scams following HSBC's intervention.

HSBC argues that it's unlikely Mr O would have been deterred from investing given that his relative and friend were successfully investing. And he would more likely have preferred any reassurances from the scammer over a generic warning from his bank.

I've carefully considered the comments HSBC has put forward. But I'm not persuaded by its reasoning. From what I've seen, Mr O didn't seek out this investment opportunity. He's told us he would have left the funds in his account for a house deposit but for the scam. I acknowledge that he'd been told by friends and family that they were making returns. But I'm not persuaded that Mr O would have simply ignored a warning from his trusted bank and continued investing without looking into things further independently as HSBC has suggested. Instead, I'm persuaded that a meaningful intervention from HSBC at that time would likely have exposed the scam. And I think it's more likely than not that an intervention would have caused Mr O to stop from going ahead with the payment, thereby preventing his loss.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. I've duly considered whether Mr O should bear some responsibility by way of contributory negligence. However, in this case, I don't think he could have foreseen the risk that the company he was dealing with was a scam and simply didn't appreciate what he was doing or the consequences of his actions.

I haven't seen any evidence to suggest that Mr O had investment experience such that he ought to have realised he had been given inaccurate information, or that what he was told was too good to be true. Unaware of the common deceptive tactics of scammers, Mr O unwittingly agreed to continue making deposits until such time that he realised something had gone wrong.

I've thought about this carefully, given the imbalance of knowledge between the parties. While acknowledging that Mr O could have done more research – as can most customers – overall, I'm not persuaded that it would be fair to make a deduction for contributory negligence in this case.

Putting things right

To put matters right, HSBC UK Bank Plc needs to reimburse Mr O the three disputed payments less the amount that's already been recovered.

As the payments came from a current account, I consider that it would be fair and reasonable for the bank to also add simple interest at 8% per year, calculated from the date of loss to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to put things right for Mr O as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 13 April 2023.

Gagandeep Singh
Ombudsman