

## **The complaint**

Mr M complains about the actions of HSBC UK Bank Plc when he lost money to a scam.

Mr M is being represented by a claims management company but for ease of reading I'll only refer to Mr M in the decision.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Around May 2022 Mr M was contacted by a merchant after seeing a social media post that said a well-known online company were now offering cryptocurrency investments. He initially made a payment of £200 and this appeared to perform very well – making £350 very quickly.

Mr M was then persuaded to continue investing by the merchant. He downloaded software to his computer at the merchant's instructions and thought he was going to be making payments of £150 and £200. But Mr M saw that the merchant had made payments of £15,000 on 16 June 2022 and then £20,000 the following day. These payments were sent to a genuine cryptocurrency exchange. Mr M asked what had happened and was happy with the scammers explanation - that he would make the money back based upon how well his first £200 investment had performed.

Mr M then became suspicious of the merchant after they asked him to make further payments and, after he refused, he lost contact with them. So, he contacted HSBC to raise a claim. HSBC considered the claim but decided not to refund the £35,000 Mr M had lost. It said the payments weren't unusual or suspicious in relation to his normal account activity. Mr M remained unhappy, so he brought his complaint to this service.

Our investigator reviewed the complaint and said the complaint should be upheld in full. She said the payments were sufficiently unusual for HSBC to have stopped them and asked further questions of Mr M. And if it had done so the scam, more likely than not, would've been uncovered.

Mr M agreed with the investigator's opinion. But HSBC disagreed. It said that the payments weren't unusual compared to Mr M's usual account activity. And that if an award should be made then a 50% deduction to any refund should be applied because Mr M failed to act reasonably when going ahead with the payments. HSBC added that if Mr M had conducted some basic due diligence, he would've encountered the negative reviews about the scammer online. HSBC said Mr M had downloaded software on to his computer and that he should've been aware of the dangers with unregulated investing due to his role at an investment bank.

I considered the complaint and felt that HSBC could've done more to stop the second payment Mr M made towards the scam. But that Mr M didn't act reasonably when he failed to carry out due diligence on the scammer. And if he had, I felt that this would've led to him coming across negative reviews about the scammer online which would've more likely than

not caused him to not continue with the scam. So, I said I was minded to ask HSBC to refund the second transaction of £20,000 with a 25% deduction. This meant HSBC refunding £15,000 to Mr M with 8% simple interest per year from the date of the transaction to the date of settlement.

HSBC said that it was willing to make Mr M an offer of £15,000 as a gesture of goodwill. But Mr M disagreed. He said the first £15,000 was unusual because it was to a high-risk genuine cryptocurrency exchange and should also be refunded. Mr M agreed that a reduction of 25% on any refund was reasonable.

### **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.

Having done so, I've decided to uphold this complaint in part. I'm sorry to hear that Mr M has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

It is common ground that Mr M authorised the scam payments of around £35,000. I accept that these were authorised payments even though Mr M was the victim of a scam. So, although it wasn't his intention to pay money to the scammers, under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr M is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

HSBC's first obligation is to follow the instructions that Mr M provides. But if those instructions are sufficiently unusual or uncharacteristic for the account, I'd expect HSBC to intervene and to ask their customer more about the intended transaction before processing it. I'd also expect HSBC to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payment. There might also be cases where it's appropriate for HSBC to refuse to follow the instruction if there are good grounds to believe it is being made as a result of fraud or a scam.

So, the starting point here is whether the instructions given by Mr M to HSBC were unusual in relation to his typical account activity. So, I've reviewed the account statements for the twelve months prior to the scam payments, which I consider gives a good sample size to assess what was typical activity for the account. The account was typically well managed and maintained a credit balance. And I note Mr M had made payments previously ranging from £10,000 in March 2022 to £31,000 in April 2022.

I've now reviewed the two payments that were made by Mr M towards this scam. Having done so, I agree that more could've been done by HSBC here. But I don't agree with the investigator that the first payment should've been stopped. I believe that the second larger payment (£20,000) the next day should've seemed suspicious to HSBC.

The reason I think the second payment should've been stopped is because it was sent to a relatively new payee. And Mr M had only sent small payments to that payee before. The second payment was within a short period of time after the first £15,000 payment. By the time it was sent, £35,000 had left Mr M's account within 24 hours. I've also considered that the payment was funded by a large inbound payment before almost the entire balance was transferred out of the account.

And if that second payment had been stopped then I'm satisfied that it's likely the scam would've been uncovered by a trained call handler asking some probing questions of Mr M about why he was sending this money to the genuine cryptocurrency exchange. That's because this had all the traditional signs that a trained employee of HSBC would've been able to notice for e.g. money being sent through a genuine cryptocurrency exchange before being forwarded to a merchant to a separate and external trade account to trade on Mr M's behalf.

So, I think there was enough happening on the account for HSBC to have been suspicious and for that £20,000 to be considered unusual. And if the payment had been stopped its more likely than not the scam would've been uncovered like the later payment that HSBC stopped.

I appreciate Mr M has said the first payment to the scammer was sent to a high-risk cryptocurrency exchange which should've raised a concern for HSBC. But that alone isn't sufficient for me to consider that payment to be unusual – account usage can change over time. And the first payment wasn't so unusual compared to the payments he'd made previously.

*Did Mr M act reasonably?*

HSBC thinks that Mr M should bear some responsibility for failing to do his own due diligence and because of his job, at an investment bank, he should've known about the dangers of unregulated investments.

I've considered this carefully. I think it would be fair for a deduction to be made to the £20,000 payment. But I don't agree this should be 50%. I think a fairer amount would be 25% here.

I accept that if Mr M had conducted some research, he would've likely encountered the negative reviews online. And that he continued with the scam after the amounts had been changed by the scammers at the time the payments were made. But I can understand why he was taken in by the scam being advertised on social media and that it was being set up through a reputable company. I don't think Mr M should've been more aware of what was happening due to his job because I don't think HSBC can fairly assume in this instance that his role means he should be held to a higher standard than that of a reasonable person.

*Did HSBC act reasonably when it was made aware of the scam?*

I've considered whether HSBC acted reasonably when it was made aware of the scam. HSBC said to this service that it didn't contact the genuine cryptocurrency exchange because Mr M confirmed his funds were sent to a wallet in his name before being forwarded to the scammers. So, HSBC wouldn't have been able to recover any of his funds. So, I don't think it treated him unreasonably here.

### **Putting things right**

I believe HSBC should've done more here to stop the second transaction (£20,000) Mr M made to the scammer. And if it had I'm satisfied the money wouldn't have been lost.

But HSBC can deduct 25% from this amount because of Mr M not acting reasonably. Therefore, HSBC should refund Mr M £15,000. HSBC should also add 8% simple interest per year to this amount from the date of the second payment to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint in part. HSCB UK Bank Plc should do the following;

- Pay Mr M £15,000
- Pay 8% simple interest per year to this amount from the date of the second payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 August 2023.

Mark Dobson  
**Ombudsman**