

The complaint

Mr and Mrs R complain that HSBC UK Bank Plc won't refund the money they lost when they were the victims of a scam.

What happened

In September 2020, Mr and Mrs R say they received an email with an advert where a number of celebrities discussed investing online. As they were interested in making an investment, Mr and Mrs R say they then looked online themselves, came across an investment company they thought looked professional and filled in an online enquiry form.

They then received a phone call from someone who said they worked for the investment company, who talked them through the trading platform they offered and how to make trades and withdrawals. And as Mr and Mrs R were happy to proceed, they then made a number of payments from their HSBC account to the investment company, as instructed to by the caller. I've set out the payments they made, as well as some credits they received from the investment company, below:

Date	Details	Amount
20 September 2020	1 st cryptocurrency exchange	£2
24 September 2020	Credit from 1 st exchange	£2 credit
25 September 2020	1 st cryptocurrency exchange	£2
30 September 2020	Credit from 1 st exchange	£2 credit
3 October 2020	2 nd cryptocurrency exchange	£2
7 October 2020	1 st cryptocurrency exchange	£2
8 October 2020	1 st cryptocurrency exchange	£101
8 October 2020	1 st cryptocurrency exchange	£6,000
9 October 2020	1 st cryptocurrency exchange	£4,000
9 October 2020	Credit from 1 st exchange	£4,000 credit
9 October 2020	1 st cryptocurrency exchange	£2,000
9 October 2020	Credit from 1 st exchange	£2,000 credit
9 October 2020	1 st cryptocurrency exchange	£4,000
9 October 2020	Credit from 1 st exchange	£4,000 credit
10 October 2020	1 st cryptocurrency exchange	£4,000
14 October 2020	Credit from 1 st exchange	£200 credit
14 October 2020	1 st cryptocurrency exchange	£10,000
15 October 2020	1 st cryptocurrency exchange	£10,000
16 October 2020	1 st cryptocurrency exchange	£10,000
19 October 2020	1 st cryptocurrency exchange	£10,000
26 October 2020	1 st cryptocurrency exchange	£10,000
27 October 2020	1 st cryptocurrency exchange	£5,000
4 November 2020	1 st cryptocurrency exchange	£10,000
5 November 2020	1 st cryptocurrency exchange	£10,000
6 November 2020	1 st cryptocurrency exchange	£5,000
8 December 2020	Credit from 1 st exchange	£800.87 credit
8 December 2020	Credit from 1 st exchange	£80 credit

Unfortunately, we now know the caller and the investment company were a scam.

The scam was uncovered when Mr and Mrs R were told by the investment company that their trading account was in danger of entering a deficit. They were then told they would have to pay 10% of the amount they had already invested in order to recover their account, which made them suspicious. And when the investment company then became rude and unprofessional, Mr and Mrs R realised they had been scammed and reported the payments they had made to HSBC.

HSBC investigated but said Mr and Mrs R had made the payments out of their HSBC account to other accounts in their names, before then sending money to the scammers. So they didn't agree to refund the money Mr and Mrs R had lost. Mr and Mrs R weren't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought HSBC should have identified that Mr and Mrs R were at risk of fraud as a result of some of the payments they were making, and so intervened. But they also thought it would be fair for Mr and Mrs R to bear some responsibility for their loss too. So they recommended HSBC refunded 50% of the money Mr and Mrs R had lost, from the ninth payment they had made onwards. HSBC disagreed with our investigator, so the complaint has been passed to me.

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.

Did HSBC do enough to protect Mr and Mrs R?

Banks are expected to make payments in line with their customers' instructions. And Mr and Mrs R accept they made the payments here. So while I recognise they didn't intend for the money to go to scammers, they did authorise the payments. And so the starting position in law is that HSBC was obliged to follow their instructions and make the payments. So Mr and Mrs R aren't automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or 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 that its customers were at risk of fraud (among 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.
- 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.

And so I've also considered whether HSBC should have identified that Mr and Mrs R were potentially at risk of fraud as a result of these payments.

The first payments Mr and Mrs R made here weren't for what I'd consider to be particularly large amounts and they didn't leave the balance of the account at particularly unusual levels. There were also gaps of a number of days between some of the payments, which would make any pattern or connection between them more difficult to identify, and it wasn't unusual for payments of what I'd consider to be similar amounts to be made out of the account. So I think it's reasonable that HSBC didn't identify a risk of fraud as a result of these first payments.

But once Mr and Mrs R tried to make the ninth payment here, for £4,000 on 9 October 2020, I think HSBC should have identified a risk. This payment was the third payment Mr and Mrs R had made to the cryptocurrency exchange that day. It was also the third day in a row Mr and Mrs R had made payments to the cryptocurrency exchange, the total amount they had sent to the cryptocurrency exchange in the past few weeks was now a significant amount, and the amounts they had been sending were increasing each day – which all matches a pattern of payments often seen in scam cases. So I think HSBC should have identified that Mr and Mrs R were at risk of financial harm from fraud as a result of this ninth payment and intervened to carry out additional checks before allowing it to go through.

It's not for our service to dictate the checks HSBC should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the pattern of payments, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then follow-up questions about the investments Mr and Mrs R thought they were making.

I've not seen anything to suggest Mr and Mrs R would have lied or tried to mislead HSBC if they were asked about the payments. So I think it's likely they would have told HSBC the payments were for investments they were making. I think HSBC should then have asked further questions about the investments, such as what they were investing in, where they had found out about the investment and whether anyone was helping them with it. And I think Mr and Mrs R would then have told HSBC they were investing in currency exchange and cryptocurrency, had found out about the investment company online and were being guided through making the payments by someone from the company. And as this fits the pattern of common cryptocurrency investment scams, I think HSBC should then have warned them that they were likely the victims of a scam.

HSBC has said Mr R has professional knowledge and experience of investments, and so its advisors wouldn't have been able to provide any more guidance or information than he would already have been aware of. It's suggested he would have been aware of how to confirm any potential investment was genuine and had already chosen to proceed despite this. So it doesn't think any intervention it could have made would have stopped Mr and Mrs R from carrying on with the payments to the investment company.

But Mr R's professional experience doesn't appear to be related to this particular kind of investment. And, in any event, I still think HSBC's guidance would have carried some weight with Mr and Mrs R. So if HSBC had warned them that their circumstances fitted a pattern of common cryptocurrency scams, warned them about common tactics scammers use and given them some advice on how to avoid scams – such as trying to withdraw all their funds or checking the investment company was registered with the FCA – I think Mr and Mrs R would have realised this was likely a scam and wouldn't have made any further payments.

So if HSBC had done more to protect Mr and Mrs R, as I think it should have, I don't think they would have made this ninth payment or any of the later payments. And so I think HSBC should refund the money they lost as a result of this scam, from the ninth payment onwards.

And as Mr and Mrs R have now been without this money for a period of time, I think HSBC should pay them compensatory interest at the rate of 8% simple a year from the date of the payments until the date they are refunded.

Should Mr and Mrs R bear some responsibility for their loss?

I've also considered whether Mr and Mrs R should bear some responsibility for the loss they suffered. And while I appreciate this was a sophisticated scam where they spoke to the scammer frequently and were given a trading platform where they could monitor their investment, I think there were a number of things about what was happening or what they were told that should have caused Mr and Mrs R significant concern.

While Mr and Mrs R say they looked at the investment company's website and online reviews for it, they don't appear to have done any further checks into who the company was or whether the person they then spoke to was connected to the company. They also don't appear to have been sent any paperwork relating to the services the company was providing them or the investments they were making.

Mr and Mrs R also don't appear to have a clear understanding of how the investments they were supposedly making worked, what exactly they were investing in, how the returns were generated or why the payments into the trading platform needed to be made in cryptocurrency. And, particularly given the amount of money they ultimately paid into the investment, I think it's reasonable to expect them to have checked and understood these things before going ahead.

For the later payments, Mr and Mrs R were also told they had to pay more money in before they could withdraw the profits they had been making. But it doesn't appear they were told about this requirement before investing, and this isn't how genuine investment would work. So I think this should have caused them significant concern about whether what they were being told was true.

So I think it would be fair and reasonable for Mr and Mrs R to bear some responsibility for the loss they suffered.

And so I think both HSBC and Mr and Mrs R should bear some responsibility, and it would be fair for HSBC to refund 50% of the money Mr and Mrs R lost, from the ninth payment onwards.

My final decision

For the reasons set out above, I uphold this complaint in part and require HSBC UK Bank Plc to:

- Refund Mr and Mrs R 50% of the money they lost, from the ninth payment onwards – totalling £41,459.56
- Pay 8% simple interest a year on that refund, from the date of the payments until the date of the refund

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 1 December 2023.

Alan Millward
Ombudsman