

The complaint

Ms C and Mr L complain that HSBC UK Bank Plc ('HSBC') won't refund the money they lost in a scam.

What happened

Ms C and Mr L have a joint account with HSBC and are represented in this case. As Mr L made the payments and has been involved in the dispute, I'll mainly refer to him in my decision.

Mr L says that he found out about an investment that was endorsed by a well-known money expert and provided his contact details. He then received a call from someone from a company I'll refer to as E. Mr L didn't know at the time, but the caller was a scammer who was using the details of a genuine company. The scammer explained how the investment worked. Mr L says he completed an internet search and didn't find anything untoward, and he decided to go ahead. He was provided with a trading account and could see his payments being credited to his account and the profit he earned. The scammer kept in regular contact with Mr L.

Between 27 June 2022 and 27 August 2022 Mr L made payments towards his investment. When he tried to withdraw his funds, he was advised of various fees he would need to pay. Mr L received fake emails purportedly from the cryptocurrency exchange advising of a confirmation fee, capital gains tax and other fees. The payments he made from October 2022 relate to these fees.

Mr L made the following faster payments to a cryptocurrency exchange. The scammer then helped Mr L move funds to the trading platform.

Date	Amount
27/06/22	£100
28/06/22	£2
30/06/22	£2,000
25/07/22	£5,000
05/08/22	£999
27/08/22	£5,500
19/10/22	£13,950
20/10/22	£19,930
21/10/22	£19,600
26/10/22	£17,450
31/10/22	£19,957
Total	£104,488

Mr L realised he was the victim of a scam when he kept being asked for further funds and contacted the genuine company the scammer was impersonating and was told there were no pending payments. Mr L reported the scam to HSBC in a call on 10 November 2022.

After reviewing the evidence HSBC said that the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) doesn't apply in this case as Mr L made the scam payments to an account in his own name at a cryptocurrency exchange. HSBC noted that the payment of £2,000 on 30 June 2022 was held for additional checks and its fraud team spoke to Mr L. In this call Mr L said that he was doing a personal stock investment that involved various currencies, he had already received returns of around £1,700, that he was doing the investment alone and no third party had advised him to mislead HSBC. As a result, the transaction was processed, and HSBC say there was no bank error.

Our investigation so far

The investigator who considered this complaint initially recommended that it be upheld in full. He said initially that HSBC's intervention on 30 June 2023 didn't go far enough and that had it asked further questions the spell would have been broken and the scam uncovered. HSBC were unhappy with the investigator's view and raised various points about the fact Mr L had misled HSBC in calls and so even if it had done more Ms C and Mr L's loss wouldn't have been prevented. HSBC also said that the investigator was wrong to say Mr L did enough research before investing.

The investigator gathered further evidence and ultimately issued a second view in which he maintained that HSBC didn't do enough when it spoke to Mr L but went on to say that Ms C and Mr L should only be awarded 50% of their loss. Ms C and Mr L accepted this view, but HSBC didn't. In summary, HSBC raised the following points:

- Payments were made to an account at a cryptocurrency exchange that Mr L had access to and control of and the loss was from this account.
- There's clear evidence from the messages Mr L exchanged with the scammer that he was being coached about what to say ahead of any possible intervention by his bank. HSBC quoted messages from the scammer a few days before that I'll refer to below. HSBC also referred to a message from the scammer in October 2022 when the scammer was still advising Mr L not to tell his bank what was really happening. Mr L's response was, *"Not to worry the transaction...is ostensibly about paying off some debt...as far as the banks concerned"*.
- When HSBC did intervene on 30 June 2022, Mr L knowingly misled it. During this call Mr L confirmed he was doing some personal investment alone and without coercion. When asked if he was investing in cryptocurrency Mr L said *"No, this is stocks"*. Mr L also said that nobody had advised him on how to answer HSBC's questions or to mislead HSBC.
- HSBC intervened in an earlier payment on 23 June 2022. Mr L was honest in his responses and the loss was prevented.
- Mr L would have proceeded to make the payment irrespective of what HSBC said in the call on 30 June 2022. Mr L was entirely under the spell of the scammer. This service has made an assumption in saying Mr L would have disclosed he was investing in cryptocurrency.
- Mr L had paid the same beneficiary prior to the scam for seemingly genuine reasons and without the involvement of a third party.
- In the event the complaint is upheld Mr L should bear 50% responsibility for his 'investment' loss as he didn't do enough to check the legitimacy of the investment or pick up on obvious red flags like being asked to lie to his bank. He invested a huge

amount of money without fully understanding what he was getting involved in and without seeking independent advice. HSBC went further and said Mr L should be fully responsible for his loss from the point he was asked to pay fees.

The complaint has been passed to me to review.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

The CRM Code only applies to faster payments between UK GBP accounts, so it isn't relevant here.

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider 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.

The first payments Mr L made from his joint account with Ms C (of £100 and £2) were unremarkable so I wouldn't have expected HSBC to intervene when the payment requests were made. HSBC blocked the £2,000 payment on 30 June 2022 and had a conversation with Mr L about it.

Before I consider what was discussed in that call, I think it would be useful to provide some background information. HSBC blocked a payment of £5,000 shortly before the scam transactions, on 23 June 2022. Mr L says this payment wasn't linked to the scam although the position is unclear as Mr L refers to the same celebrity providing tips about this investment, and he was messaging the scammer at the time. In any event the payment was flagged, and Mr L was asked if he'd checked the FCA website and made sure he was not dealing with a cloned company. The call ended and Mr L called back asking that the payment be cancelled as he couldn't find the company on the FCA 'list'. He was then asked if he'd been told what to say, or advised to mislead the bank, and if a third party asked him to make the payment. Mr L answered 'Yes' to these questions and the payment wasn't made. So, HSBC was on notice that Mr L was potentially falling victim to a scam just before its intervention on 30 June 2022.

I've listened carefully to Mr L's call with HSBC on 30 June 2022. Having done so it's clear that before HSBC asked any questions Mr L made a point of answering any concern HSBC might have about it upfront. I appreciate this was because he was being coached, a point I'll

come on to address. Mr L told HSBC that he was doing some personal investment by himself with limited success and went on to say there was no coercion or third-party involvement. His words sounded scripted, and I think HSBC ought to have picked up on the fact that before it asked any questions Mr L covered these points.

When asked about the purpose of the payment Mr L talked about shares going up and down. When he was specifically asked if he was investing in cryptocurrency Mr L said he wasn't and referred to stocks and currency. But he was transferring funds to a cryptocurrency exchange, so I think it was clear something was amiss, particularly given what I have said above. HSBC didn't probe this point. Mr L was also asked what attracted him to the investment and he named the celebrity he thought was endorsing it. This ought to have been a clear red flag to HSBC as the celebrity Mr L named has made it very clear that investments that are said to be endorsed by him are fake.

I accept that Mr L wasn't entirely truthful in his call with HSBC. For example, in response to questions asked, Mr L said that nobody had told him how to answer the bank's questions and that he had checked the FCA website. And I acknowledge the points HSBC has made about the chat conversation between Mr L and the scammer. In this chat, shortly before the £2,000 transaction, the scammer said,

"Since it's crypto investment, it's very sensitive subject for banks as you understand, so sometimes you have to call them and tell them that you are doing it on your own, and nobody is telling you to do that and nobody is connected through anydesk and in general there's no third party involved in the transaction so they can make sure that you are making this deposit by yourself". And, in relation to questions that might be asked,

"If you are doing it by yourself alone, if anyone is connected to your computer, or if there's 3rd party is involved. As long as they understand that none of these questions are positive they will approve the transaction, otherwise it will be cancelled."

Given the above comments, and others in the chat with the scammer, it's clear that Mr L was coached about what to tell HSBC. But HSBC, as the expert here, ought to have been aware that victims are often coached by scammers to lie to various parties to ensure the scam is successful. As a result, HSBC should go beyond simply asking questions and probe unusual answers or behaviour. I have referred above to multiple red flags for HSBC that weren't picked up on. Whilst Mr L may not immediately have told the truth about what was happening, I consider that he couldn't possibly have given a plausible response to some questions and that had HSBC said the celebrity Mr L referred to never endorses or advertises investments the scam would have been uncovered.

Overall, I consider the information Mr L gave HSBC was so concerning that it ought to have done more to protect him from financial harm and that had it done so it's more likely than not the scam would have been uncovered.

I'm also not persuaded that the fact the payments were going to Mr L's own account and so appeared to be going somewhere safe and within his control means that HSBC isn't liable here. This is because by January 2019, banks like HSBC had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I've gone on to consider whether Mr L should share responsibility for his loss. I think he should, for the following reasons:

- Mr L invested a significant amount of money for someone who has been described by his representative as an inexperienced investor. I consider that any investor should complete research and that someone investing more significant sums should take particular care to ensure the opportunity is genuine.
- Communication with the scammer was via a messaging app not commonly used by

legitimate investment companies.

- Mr L wasn't provided with any form of contract or terms of business by E.
- Mr L ought reasonably to have had concerns about the use of a screen sharing app. I don't consider a genuine investment company would use such an app and I think Mr L's background in IT ought reasonably to have made him concerned about it.
- Mr L says he looked up E and found a genuine company. I've looked this company up on Companies House and can see that the company is involved in real estate and not cryptocurrency trading.
- I consider it ought to have been a red flag to Mr L that he was repeatedly asked to lie to his bank. I don't consider a legitimate investment company would ask a client to do this. Mr L didn't ask questions about misleading his bank.
- The reasons for the payments became more implausible as Mr L sought to withdraw his funds and the total amount Mr L paid to withdraw them far exceeded his original investment (which also indicates the returns were too good to be true). I appreciate Mr L received some emails purportedly from the cryptocurrency exchange advising him of fees, but these were poorly written.

I'm not satisfied that Mr L should be held fully responsible for the loss from his joint account from the point he was asked to pay fees to release his funds as HSBC suggests. I've concluded that HSBC, as the fraud expert, didn't do enough when it had the opportunity to uncover the scam so it should bear some responsibility.

Overall, whilst I'm sorry to hear that Ms C and Mr L have lost funds in this way, I can't reasonably ask HSBC to refund them in full.

My final decision

I require HSBC UK Bank Plc to:

- Refund 50% of all payments from and including the £2,000 transaction on 30 June 2022 onwards; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms C and Mr L how much it has taken off. It should also give them a tax deduction certificate if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr L to accept or reject my decision before 15 January 2024.

Jay Hadfield
Ombudsman