

The complaint

Mr and Mrs R are unhappy that HSBC UK Bank Plc (trading as First Direct) won't reimburse them for the money they lost when Mr R fell victim to a scam.

What happened

Mr and Mrs R are represented in this complaint by a solicitor, for simplicity I will refer to Mr and Mrs R throughout this decision, even when referencing what their representatives have said on their behalf.

Mr R was browsing social media and saw an advert for a cryptocurrency investment platform, he says it promised "realistic but impressive" returns and had a professional looking website. Mr R registered his interest with the investment platform and opened a trading account. He was then contacted by an individual who said they would be his account manager and would carry out trades on his behalf. Mr R was told to send funds to accounts he was directed to open with other financial institutions ("R" and "W") and then on to a cryptocurrency wallet. Mr R says he saw trades being carried out on his behalf, making reasonable profits, and was able to make some small withdrawals.

Between 10 May 2022 and 16 June 2022 Mr R made five payments – totalling £70,000 – to the investment scheme. However, when he said he wanted to withdraw his profits, he was told he'd need to make significant further deposits before he could make any withdrawal. Mr R then made further payments of around £38,000 to the scheme, funded by a loan, to facilitate this withdrawal. But when he didn't receive any payment back, and was unable to make meaningful contact with the individuals he'd been dealing with or access the trading platform, Mr R became suspicious and realised he had been the victim of a scam.

Mr R contacted HSBC on 13 July 2022 to tell it what had happened. But ultimately HSBC said it did not think it should be held responsible for Mr and Mrs R's loss, it said the payments were not unusual enough to be flagged as suspicious by its systems, and that the payments from Mr and Mrs R's HSBC account had been made to other accounts in Mr R's name at R and W, before being passed on to the scammers. So HSBC felt that R and W should bear responsibility for the financial loss.

Mr and Mrs R were unhappy with HSBC's response and so referred their complaint to our service.

One of our Investigators looked into what had happened, and ultimately they felt that HSBC should have stepped in to question Mr and Mrs R about the third payment made – which was for £21,000. They felt that, if HSBC had done so, then the scam would have been uncovered and most of Mr and Mrs R's loss could have been prevented. However, Mr and Mrs R had also referred a complaint to our service about R, the account that the first five payments they made went to before the funds were passed to the scammers, and looking at the overall picture the Investigator felt that R and HSBC should share responsibility for Mr and Mrs R's loss from the third, fourth and fifth payment.

The Investigator felt that by the time of the sixth payment – which went to W and was for “exit fees” to allow Mr R to withdraw his profits – Mr R should have realised that something untoward was going on. So they felt that Mr R should bear some responsibility for what had happened from that point onwards.

So, overall, the Investigator recommended that HSBC refund 50% of the disputed payments from the third payment onwards, plus interest. This represented HSBC sharing liability for the third, fourth and fifth payments with R, and sharing liability for the sixth, seventh and eight payments with Mr and Mrs R.

Mr and Mrs R accepted the Investigator’s findings, HSBC did not. It says that Mr and Mrs R only referred a complaint about the payments to W to our service, and so does not think we should have considered the payments to R at all. It also maintains that the loss was ultimately made from the accounts held with W (and with R) and so feels they should bear responsibility for the loss here.

As no agreement could be reached, this case has been passed to me for a decision.

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 reached the same conclusion as our Investigator, and for the same reasons.

Firstly, I’d like to note that while Mr and Mrs R only referred to the last three payments made as a result of the scam on their complaint form regarding this case against HSBC, it’s clear from their original correspondence with HSBC that they had initially complained about all eight payments made as a result of the scam. And I am satisfied that, bearing in mind the findings issued on the linked case against R, it is therefore within our remit to consider all the disputed payments as part of this complaint.

It’s not disputed that Mr R authorised the payments that are in dispute. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr and Mrs R are responsible for them. That remains the case even though Mr R was the unfortunate victim of a scam.

Because of this, Mr and Mrs R are not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr and Mrs R, or whether it should have done more than it did.

Mr and Mrs R’s HSBC account was one they used regularly for day-to-day expenses, so there was a significant transaction history for HSBC to compare any new payments to. And Mr and Mrs R did, on occasion, make high value payments and transfers from their account. I also acknowledge that the payments in dispute here were made to accounts with R and W in Mr R’s own name, and so would have appeared less risky overall to HSBC. However, just because a payment is to an account in the consumer’s own name that does not mean it

bears no risk at all, and I would still expect HSBC to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks or e-money providers, and then on to buy cryptocurrency – is increasingly a feature of this kind of investment scam. And I would expect HSBC to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

The first two payments made by Mr R were for relatively low amounts, given how the HSBC account usually operated, and so I don't think there was anything about those payments that ought to have suggested to HSBC that Mr and Mrs R were at risk of financial harm. But I agree with our Investigator that the next payment, which was for £21,000, should have flagged as potentially suspicious to HSBC, despite the fact that it was a payment to an existing payee, and the account it was being paid into was in Mr R's name. I say this because £21,000 was significantly higher than any other payment made from the account in the previous six months, and this payment was preceded by a loan for the same amount being paid into Mr and Mrs R's account, another indicator that this payment might have been part of a scam. Given the high value of this payment, the risk that allowing such a high payment to go through could present, and that what was happening with Mr and Mrs R's account did have some of the hallmarks of an investment scam, I think HSBC should have contacted Mr and Mrs R directly to ask them some questions before allowing this payment to go through, despite the fact that the payment was going to Mr R's own account with R.

Had HSBC done this, then I think it is more likely than not that the scam would have been uncovered. Mr R doesn't appear to have been given a cover story to use by the scammer, so I think that if HSBC had asked what the payments were for then he would have been open and honest. And what Mr R would likely have told HSBC about what he was doing should have rung alarm bells for HSBC, given that these types of investment scam are becoming increasingly common. HSBC could then have explained the risks Mr R was exposing himself to, and I consider it likely that the spell of the scam would have been broken and Mr R wouldn't have proceeded with the payments. So I think HSBC could have prevented the losses Mr and Mrs R incurred from the third payment onwards.

I do though need to bear in mind that Mr and Mrs R also chose to refer a complaint about the first five payments to our service against R. So given that we've been asked to consider R's role in what happened, and that our findings were that R could also have done more to prevent the disputed payments being made from the third payment onwards, I consider it is fair for liability for that loss to be shared between HSBC and R. HSBC feels that R should bear all the liability for the loss. But, for the reasons explained above, I don't consider that the fact there were further accounts in the payment journey before the funds were ultimately sent to the scammers means that HSBC is absolved of any responsibility for the loss incurred here.

Turning to the last three payments, which were made to W, and then moved on to the scammers, I agree with our Investigator that by this stage Mr R should have realised that something potentially untoward might be going on. He'd been told these last payments were for fees he needed to pay to release his profits, but given that these fees were more than half of his initial investment, and he'd previously been able to make small withdrawals without paying fees, I think this should have raised a red flag for Mr R and caused him to question more what he was being asked to do. With this in mind, I think it's fair and reasonable for Mr and Mrs R to bear responsibility for 50% of the loss resulting from these last three payments.

HSBC has said that W should bear responsibility for the remainder of the loss from these last three payments, but we have not been asked to consider a complaint against W. I can only consider the complaints put before me, and given that I'm satisfied HSBC could have prevented these payments if it had stepped in to question what was happening at a much earlier stage, I'm satisfied that it is reasonable for HSBC to bear responsibility for 50% of the loss resulting from these payments.

I've also thought about whether HSBC could have done more to recover the funds after Mr R reported the fraud. I'm satisfied that HSBC could not have done more here. Mr R had transferred money to his own accounts with R and W before the funds were subsequently transferred on to the scammer. So while HSBC had an obligation to notify R and W of what had happened, it wouldn't have the same obligations as the bank responsible for the eventual transfer to the scammer's account. And in any case, the funds were moved on from the accounts with R and W before Mr R reported the scam to HSBC, so there would have been no funds to recover by that stage.

So, in summary, I consider when Mr R made the third transfer, HSBC could have done more to protect him and Mrs R from the risk of financial harm. Had HSBC contacted Mr and Mrs R directly and asked some open questions about what was happening, I'm persuaded it is more likely than not the scam would have come to light, and Mr and Mrs R wouldn't have lost out on the funds they then went on to transfer. I do though consider that R – the bank where the first five payments were made to – should share responsibility for the loss resulting from payments three to five, and that Mr and Mrs R should also share responsibility for their loss here, from the sixth payment onwards.

So I consider it fair and reasonable for HSBC to refund 50% of the payments made from the third payment onwards, along with interest at our standard compensatory rate of 8%.

Putting things right

To resolve this complaint HSBC should:

- Refund 50% of payments three to eight (representing a refund of £52,500)
- Pay 8% simple interest per annum on this amount, calculated from the date of each payment until this complaint is settled.

My final decision

I uphold this complaint. HSBC UK Bank Plc (trading as First Direct) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 11 December 2023.

Sophie Mitchell
Ombudsman