

## The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) refuses to refund him money he says he lost as a result of a scam.

Mr M is represented by CEL Solicitors in this matter.

## What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In January 2022, Mr M says a person purporting to be from BlockChain had telephoned him. He says this person informed him that an investment he (Mr M) had made in 2014 had accrued a profit of £79,000. Thereafter, Mr M explains that he was persuaded to make several payments (see below) in order to be able to release his investment funds. Due to not being able to withdraw these funds, Mr M says he later discovered he had been scammed.

Mr M informed HSBC about the above and requested a refund. As HSBC declined to do this, Mr M raised a complaint which he referred to our Service.

One of our investigators considered the complaint and upheld it in part: asking HSBC to refund Mr M the £6,000 payment he made on 27 January 2022, and all those thereafter (see below). Mr M accepted the investigator’s findings, but HSBC did not. In short, HSBC said that it did not act in error, and even if it had, Mr M should share some responsibility for his losses.

As an agreement could not be reached, this matter has been passed to me to make a decision.

The payments in question according to Mr M are as follows:

### Debits:

Date	Merchant	Payment Method	Amount
26 Jan 2022	W (payment service provider)	Card	£250.75
26 Jan 2022	S (cryptocurrency exchange)	Card	£430
26 Jan 2022	W	Card	£3,009.00
27 Jan 2022	C (cryptocurrency exchange)	Transfer	£6,000.00
27 Jan 2022	W	Card	£4,012.00
28 Jan 2022	W	Card	£2,006.00
28 Jan 2022	W	Card	£2,006.00
31 Jan 2022	W	Card	£2,006.00
1 Feb 2022	C	Transfer	£8,000.00

3 Feb 2022	C	Transfer	£10,536.00
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**Credits:**

Date	Return	Amount
26 Jan 2022	W	£200.00
31 Jan 2022	W	£2,006.00
1 Feb 2022	C	£7,535.98

**On 13 July 2023, I issued a provisional decision upholding this complaint in part. For completeness, I repeat my provisional findings below:**

*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 agree with the investigator that HSBC should pay Mr M the money he lost starting from and including the £6,000 payment he made on 27 January 2022 (see above). However, I take the view that Mr M should share some responsibility for his losses for reasons I set out below.*

*But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.*

*Whilst there are other merchants involved in this matter, Mr M has brought his complaint against HSBC. So, I will be considering HSBC's conduct.*

*It is not in dispute that Mr M authorised the payments concerned. However, that is not the end of the story. HSBC has a regulatory obligation to be on the lookout for, amongst other things, unusual and out of character transactions – to protect its customers from financial harm from fraud.*

*I am persuaded that Mr M's payment transfer of £6,000 on 27 January 2022 was unusual and should have triggered HSBC's security systems; consequently, prompting it to intervene and speak to Mr M before releasing the payment. I say this given Mr M's account activity, the value of the payment and the fact it was going to a cryptocurrency exchange at a time when HSBC should have been aware of the risks of cryptocurrency scams. I am not persuaded that any of the payments prior to the one I have identified should have triggered – something which Mr M accepts.*

*HSBC says Mr M would have seen four fraud pop-ups in relation to some of his payments. Mr M says he does not recall seeing these. In my view, HSBC should have gone beyond a pop-up warning for the £6,000 payment. That is, there should have been a human intervention. I say this for the same reasons I set out above in relation to why I find the payment should have triggered. I will come back to this point in more detail in due course.*

*HSBC also say that Mr M did not select the accurate purpose for his payments; again, something which Mr M says he does not recall. Because of this, HSBC argues that one, Mr M would not have seen the relevant investment option; and two, Mr M would have misled HSBC had it intervened. Regarding the former point, I repeat what I set out above relating to why I find there should have been a human intervention. Regarding the latter, whilst I take HSBC's point, in my view, as a human intervention did not take place – I cannot speculate*

*about whether Mr M would have attempted to mislead HSBC had it intervened. And even if he had attempted to, based on the evidence before me – I take the view HSBC would have been able to identify this because any misleading explanation about his payment would not have stood up to careful scrutiny, particularly given some of the aggravating factors in this case. For example, change of payment method, change in merchants and payments made to a cryptocurrency exchange.*

*For the above reasons, I am persuaded HSBC should have intervened in the £6,000 payment. Had it done so, I am satisfied that further payments could have been prevented.*

*Mr M says that he was involved in an investment in 2014. He says he did not progress with this as he felt as if he did not have sufficient experience.*

*In my judgment, a reasonable person in Mr M's position would have had concerns and been on alert about someone telephoning them – out of the blue – about an investment they had made several years ago. I say this especially given the several payments Mr M was being asked to make to be able to withdraw his investment funds (over £9,000 by the time he made his payment on 27 January 2022). That said, I can see that the scammer, by way of email, provided Mr M with a FCA reference number. Checking this number against the FCA register shows an individual whom I will refer to as A: the same name the scammer used. Because of this, in my judgment, a reasonable person in Mr M's position would have believed the person the scammer was purporting to be – thereby making them more credible.*

*However, I do note that the FCA register does not show A as being connected to BlockChain – the company in which A told Mr M they were working for. In my view, a reasonable person in Mr M's position would have taken steps to verify this discrepancy. Again, I say this given the amount of money Mr M was being asked to pay to release his funds, and the fact he had been contacted out of the blue about an investment he made several years ago. Had Mr M taken steps to verify the discrepancy concerned, it is likely, in my view, further payments could have been prevented.*

*Taking all the above points together, whilst I find that HSBC could have done more to protect Mr M from financial harm from fraud – I also find that Mr M should share some responsibility for his losses.*

## **Responses to my provisional decision**

Mr M responded to say he agreed with my provisional findings. HSBC responded to say it also agreed, but on a gesture of goodwill basis.

## **What I have 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.

Given the responses from the parties in this matter, I will not be departing from my provisional findings.

## **My final decision**

For the reasons set out above, my decision is that I uphold this complaint in part. I therefore direct HSBC UK Bank Plc:

- Pay Mr M the money he lost – less any applicable credits – starting from and including the £6,000 payment he made on 27 January 2022 (see above); including any transaction fees (if applicable) – but subject to a 50% deduction for contributory negligence: within 28 days of receiving notification of his acceptance of my final decision; plus
- Pay 8% interest on this amount from the date it was debited from Mr M's account until the date of settlement.
- If HSBC UK Bank Plc deducts tax in relation to the interest element of this award, it should provide Mr M with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 August 2023.

Tony Massiah  
**Ombudsman**