

The complaint

X and Mr M complain that HSBC UK Bank Plc (HSBC) is refusing to refund X and Mr M the amount Mr M lost as the result of a scam.

What happened

In summary Mr M found an advertisement online whereby a celebrity was endorsing the services of a business called Interabroker (IB). IB offered services in relation to stock trading. Interested in the opportunity Mr M completed a data caption form with his personal contact information.

IB contacted Mr M by telephone to explain the investment opportunity and persuaded Mr M to invest with it. Mr M was able to see his investment using the platform MetaTrader4 that IB gave him access to. Mr M also checked he was able to make a small withdrawal from the investment.

Having had some successful trades some of Mr M's trades started to make a loss and he was encouraged to make further payments to offset the losses.

After making a payment as directed by IB Mr M was again asked to make further substantial payments into the investments. At this point Mr M became suspicious about the legitimacy of IB and has been unable to recover any further funds.

Mr M made the following payments totalling £254,765.86, via transfer and his debit card as directed by IB:

Date	Amount	Payment method	Merchant
31 July 2019	£4,595.55	Debit Card	School4broker
31 July 2019	£4,595.55	Debit Card	School4broker
2 August 2019	£4,574.15	Debit Card	School4broker
2 August 2019	£4,574.15	Debit Card	School4broker
15 August 2019	£25,000	Bill Payment	The Currency Cloud
26 August 2019	£25,000	Bill Payment	The Currency Cloud
28 August 2019	£10,000	Bill Payment	The Currency Cloud
1 November 2019	£10,306.23	International Transfer	ONPEX
29 November 2019	£20,593.33	International Transfer	Paychrome
12 December 2019	£20,604.90	International Transfer	Paychrome
23 December 2019	£29,922	International Transfer	Paychrome
25 February 2020	£30,000	International Transfer	Paychrome
25 February 2020	£20,000	International Transfer	Paychrome
26 February 2020	£20,000	Bill Payment	Niko Technologies
27 February 2020	£10,000	Bill Payment	Niko Technologies
18 March 2020	£15,000	International Transfer	Niko Technologies

In my provisional decision sent in May 2023 I said:

'Methods of recovery

For payments that are made by debit card HSBC's only method of recovery would be via chargeback. But HSBC was unable to process a chargeback for the payments Mr M made in relation to this scam.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

As Mr M complained to HSBC outside of the applicable time limits this method of recovering the funds was not available.

There are no recovery methods for international transfer payments other than contacting the payee bank that would likely only be successful if the request was made close to date the initial payment was made. I can't see that this was explored by HSBC.

Should HSBC have stepped in to prevent the scam from taking place?

Mr M has accepted he authorised the payments he made in relation to the scam, so the starting point here is that Mr M is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Mr M was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

Our Investigator thought the payments Mr M made in relation to the scam were not out of character when compared to his usual spending.

I have looked at X and Mr M's account statements for the 12 months that lead to the payments Mr M made in relation to the scam. There were several payments made over £5,000 that I would consider to be larger payments however these payments were clearly identified for specific purposes not related to investments or investment services.

For example, a payment was made in August 2018 for over £740,000 in relation to a house purchase to a named solicitor via transfer. In March 2019 three payments were made to a named car manufacturer for £10,000 but again these payments were clearly made in relation to a car purchase. Other payments including a hospital payment and a payment for window glazing both for less than £10,000 were also made by transfer.

On the 31 July 2019 Mr M made two payments for the same amount (£4,595.55) to a new payee (School4broker). I can't see from X and Mr M's statement history that this value of payment was common for them, or that they had a history of paying new businesses large amounts more than once in the same day.

A few days later, on 2 August 2019 Mr M made two more payments of the same amount (£4,574.15) to the same payee.

When looking at the spend on X and Mr M's account I think it was out of character for Mr M to make payments the same day for the same relatively high amounts to a new payee using his debit card. I think it would be reasonable for HSBC to step in by the time Mr M made the fourth payment to School4broker on 2 August 2019. This was the second time Mr M had

made large payments the same day to a new payee of the same value.

Had HSBC stepped in and had a meaningful conversation with Mr M about the payments he was making I see no reason why Mr M wouldn't have given an honest account of what he was making the payments for. That he had been working with IB and he had been drawn to the investment by a celebrity endorsement. These were common characteristics of a scam of this type.

With the above information I think it's likely HSBC would have uncovered the likelihood of the payments being related to a scam and had it given an adequate warning to Mr M I think it's likely he would not have made any further payments. So, I think HSBC missed an opportunity to step in and prevent X and Mr M's losses that occurred after the third payment he made into the scam on 2 August 2019

Did Mr M contribute to his loss?

I think this was a sophisticated scam and Mr M couldn't have reasonably foreseen that he was dealing with a scammer. Mr M was able to see balances on his trading account with X and even make withdrawals. So, I don't think he could have reasonably known that the trading balance was likely fake or a simulation – unless prompted by his trusted bank. Overall, I don't think Mr M contributed to the loss, so I don't suggest the overall settlement be reduced.'

I gave both X and Mr M, and HSBC time to respond to my provisional decision. HSBC didn't agree and provided a response.

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 response to my provisional decision HSBC raised additional points to be considered.

HSBC said I had applied retrospective standards to the transactions that took place in relation to the scam in 2019-2020 and that had the complaint been brought to our service sooner it would not have been upheld. This is not the case as authorities such as the FCA had published warnings about similar types of scams well before this scam took place, so HSBC should have been aware of the potential scam risks and stepped in as explained above.

HSBC also said that it wasn't reasonable to expect its fraud prevention systems to have been triggered as Mr M was paying several payees, and the link between them would not have been immediately clear. Mr M had also made other large payments, some on the same day.

Again, this doesn't change my decision as the payments Mr M made were of a high value to new payees. On both 31 July 2019 and 2 August 2019 Mr M made two identical payments to the same payee. On both days these payments totalled over £9,000. Splitting payments in this way is a common method used by scammers to avoid fraud prevention systems and HSBC should have been aware of this at the time. I have also previously discussed large payments made from Mr M's account in my provisional decision and given reasons why I don't think these should have stopped HSBC's fraud prevention systems from being triggered. If HSBC's systems are unable to recognise one off payments related to house and car purchases, from those made in scams such as this one, Mr M should not have to bear the responsibility.

In addition to the above HSBC has referenced a call it had with Mr M on 26 February 2020 to support its view that even if it had intervened Mr M would not have given honest information about the payments that would have raised its concern.

I have listened to this call. HSBC were checking a payment Mr M was making. Mr M explained he was making a payment to a trading company he had been using for the last year and had to top up his account before losing it as the stock market had “fallen down” and he said he found it easy to transfer money from the HSBC account. It appears in this call that Mr M was giving honest answers to HSBC’s questions that further strengthen my belief that Mr M would have given accurate answers had HSBC intervened earlier in the scam as it should have. While Mr M may not have been using what he thought was a legitimate trading company for a full year, he had been using it for some time and I don’t think he was withholding accurate information.

Mr M explained in this call features of common scams i.e. having to top up a trading account because the market had fallen, and that money would be returned later. Instead of giving an appropriate warning to Mr M HSBC explained it would put a marker on the account so future payments wouldn’t be stopped.

HSBC says that Mr M should at least share blame for his loss due to him being negligent making the payments into the scam and Mr M also sent more payments from an account elsewhere totalling another very large sum. Although HSBC also recognises there was no adverse information available for the company Mr M was investing with online.

I have thought about whether Mr M should be held partly responsible for his loss and thought about this in my provisional decision. HSBC hasn’t provided any further evidence to support its view but pointed to evidence I already had available. While some of the aspects of the scam may have raised red flags for a business such as HSBC, including payments Mr M was making from another of his bank accounts, which HSBC would likely have found out about if it had stepped in when I said it should have. I think this was a sophisticated scam that the scammer went to great lengths to make appear legitimate. I don’t think Mr M could have reasonably foreseen that he was dealing with a scammer, and I don’t think he should share blame for his loss.

HSBC has further said that 8% interest should not be added to the amount awarded in relation to this complaint as Mr M took some time making his complaint to it and he would likely have made a similar high-risk investment with the funds he lost.

I have thought about this, but Mr M made his complaint within the times allowed and because of HSBC not stepping in to prevent the scam Mr M has been without access to these funds since they left his account. It’s also not possible to know, even if Mr M was to invest the money elsewhere, that he wouldn’t have made a profit in excess of 8%. So, I think it’s fair to apply the interest of 8% from the time the payments were made.

None of the points HSBC raised have changed my mind on the outcome I reached in my provisional decision.

Putting things right

HSBC UK Bank Plc should therefore refund the total amount Mr M paid into the scam less the first three payments he made, and any withdrawals he received.

To compensate Mr M for having been deprived of this money, HSBC UK Bank Plc should also pay Mr M interest on the loss at 8% simple per year, calculated from the date of loss to the date of settlement.

My final decision

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've said above.

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

Terry Woodham
Ombudsman