

The complaint

Mr S complains that HSBC UK Bank Plc (“HSBC”) refuses to refund his losses after he fell victim to a scam.

What happened

Mr S has explained that in September 2021, he was persuaded to make a number of payments from his HSBC account for what he subsequently realised was a cryptocurrency investment scam.

The payments were sent using Mr S’s mobile banking app, initially to cryptocurrency exchanges in his own name, then sent on to the scammer. The first payment was made to a cryptocurrency exchange which I will refer to as B, and the remaining payments were made to another cryptocurrency exchange I’ll call C. Both were legitimate businesses and there is no suggestion they were involved in the scam.

Mr S was initially contacted on social media by a person he thought was a former colleague who had moved to the United States of America. But this person turned out to be a scammer. The scammer told Mr S about an investment company (which I’ll call A), saying he had invested and made good returns. Mr S continued the conversation with the scammer via a popular messaging app – and he has shared those messages with us. The scammer ultimately persuaded Mr S to invest and advised him on how to set up accounts with B and later with C.

In November 2021, when Mr S attempted to make a large withdrawal from A to his cryptocurrency wallet at C, A told him he had to pay a number of fees before the withdrawal could be released. The scammer encouraged Mr S to make the payment so the withdrawal could be processed, saying he’d paid these “one-off fees” himself and received his money without any problems.

According to the messages with the scammer, on 19 November 2021 Mr S made the payment (not via his HSBC account) but A said it was not received. Having contacted C about this, Mr S was informed by C on 23 November 2021 that, the cryptocurrency wallet address he had sent money to, had been identified by other customers as being used in a scam. Despite this, the scammer continued to message Mr S, encouraging him to make further payments to A to facilitate withdrawals.

On 31 December 2021, HSBC received a letter reporting that Mr S had been the victim of a scam and asking HSBC to reimburse the money. HSBC refused to do so, since the money had been sent to Mr S’s own account at C. Unhappy with this, Mr S referred a complaint about HSBC to the Financial Ombudsman Service.

Our investigator looked at what happened. He said that a payment for £30,000 that Mr S sent on 6 October 2021, should’ve triggered an intervention from HSBC, and that if HSBC had contacted Mr S to ask appropriate questions about the payment he was making, the scam would’ve been uncovered, and Mr S would not have proceeded. Our investigator

recommended that HSBC reimburse Mr S the payment of £30,000 as well as the payment he made after this which was for a further £15,038.

HSBC disagreed. It said that the payee information it held at the time the payments were sent was for a business regulated by the FCA (Financial Conduct Authority), so its detections system hadn't flagged these as suspicious. Mr S also disagreed asserting that the earlier payments made from his accounts were out of the ordinary, so he felt HSBC should refund the payments at least from the 20 September 2021, when he made a payment of £5,029.

As the complaint couldn't be resolved, it was passed to me.

In my provisional decision of 7 August, I set out why I was minded to upholding the complaint in part but also recommended a deduction to the redress for contributory negligence. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. HSBC replied that while it didn't fully agree to all my comments, it would be happy to resolve the complaint in accordance with the redress set out in the provisional decision. Mr S didn't agree to my provisional decision making some additional submissions which I will address below.

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 my provisional decision I explained the following:

... currently I intend to uphold this complaint for broadly the same reasons as our investigator, and I'll explain why.

To begin with, where customers authorise payments from their accounts, businesses such as HSBC are under an obligation to process such transfers. If consumers are the victim of a scam (like Mr S), the starting point is that consumers are responsible. To be clear, HSBC did not scam Mr S and it is not the perpetrator of the scam.

However, financial businesses also have a duty to try to prevent their customers falling victim to scams. Businesses therefore need to strike a balance between intervening in payments to prevent scams or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions. So, I want to re-assure HSBC that I don't take this complaint lightly and have thought carefully about if and/or why it should bear any loss in this case.

In scams of this nature, it is very common for consumers to firstly transfer money to an account held in their own name at a cryptocurrency exchange, and then on to scammers. This is a known theme of this type of scam, which business like HSBC ought to have been aware from at least 2019. So, while some business may argue that the money went to an account in the customers own name, I don't think that's sufficient reason to not carry out intervention calls when a payment was (or ought to be) flagged as suspicious.

Having looked at the evidence provided by HSBC, I can see the payment information it held wasn't for C (the cryptocurrency exchange Mr S sent the money to), but the name of an FCA regulated business. My understanding is that this business was acting as a payment processor for C but the payments were sent to C. I appreciate that where it looks as though the payments are going to or through another FCA regulated business, a bank like HSBC might be less concerned. A bank may not necessarily know or identify that the payments will

eventually be sent on to a cryptocurrency exchange. And I have to assess what HSBC did based on the information it had available at the time the payments were made.

However, while I accept that HSBC may have been less concerned about payments that it believed were going to an FCA regulated business – this is only one factor in question and I don't think that absolves HSBC of its obligations to prevent financial harm altogether. Scams of this type and other types are now very sophisticated and money sometimes goes through several FCA regulated businesses and other cryptocurrency exchanges before being sent on to the scammer. We would still expect FCA regulated businesses to take appropriate measures, to monitor their customers' accounts to flag any payments made that were out of the ordinary, ask their customers the right questions for payments that are unusual to try to safeguard the customers from financial harm.

Whether a payment is (or ought to have been) deemed unusual or suspicious will depend on a number of factors and is very specific to each case. So, I've gone on to look at Mr S's statements from September 2021 to December 2021 to assess what his usual account conduct looks like. I can see several payments leaving Mr S's account (unrelated to the scam) amounting to several thousand pounds. For example, payments amounting to £1,000, £2,209, £3,013 and £4000.

Overall, the earlier payments that Mr S feels ought to have triggered an intervention do not stand out as out of the ordinary. These amounts are only a little larger than some of the other payments going through his account. And they weren't, for example, sent in short succession of one another. For an intervention to be triggered, I would expect the payments to be sufficiently unusual or suspicious rather than slightly bigger than the other usual payments going through the account. In conjunction with the fact that the payee information HSBC could see was not that of the Cryptocurrency exchange, I am inclined to agree with our investigator, and I don't think it's unreasonable that the earlier payments didn't trigger an intervention from HSBC in this case. Overall, I don't think there's enough here for me to conclude that the earlier payments ought to have triggered an intervention by HSBC.

But while I understand why HSBC may not have flagged the earlier payments (which were significantly less than £30,000), I'm not persuaded that there is enough reason to have not flagged the payment of £30,000 as unusual. This payment was significantly larger than any other payments going through Mr S's account and very unusual when compared to the other transactions going through his account. So, I think it ought to have been flagged as unusual and HSBC should have contacted Mr S to discuss this payment before allowing it to leave his account, even if HSBC did think it was going to another UK regulated company.

Mr S hadn't been coached to lie or mis-lead HSBC (as some scammers may encourage consumers to do in these sorts of scams) so I've got no reason to doubt that, had HSBC contacted him, in line with its duty of care, that Mr S would have been honest about what he was doing. And I'm satisfied that if HSBC had a conversation with Mr S, talking through what was going on, that he would have told HSBC that the money was going to a cryptocurrency exchange for the purpose of trading (not to the FCA regulated business like HSBC may have believed at the time). I think HSBC would also have discovered that Mr S had been contacted via social media (another theme of the scam), and while he believed he was talking to someone he knew, I think on probing Mr S, HSBC would have discovered that Mr S was only communicating with the scammer via social media and the mobile messaging app. It also would have discovered the high rates of returns being promised to and shown to Mr S that were unlikely to have been realistic.

I think HSBC would likely have been able to identify the scam (because of the known themes of these types of scams that HSBC ought to have been aware of) and warned Mr S of its concerns. Combined with Mr S's own concerns over the returns being too good to be true,

and the lack of any legal documentation, I think any warnings HSBC gave Mr S following a discussion would have been taken seriously. It therefore seems probable that Mr S would have been alerted about the scam in time and stopped the payment in its tracks. So, I think an intervention likely would have prevented this loss and the one that followed.

I've gone on to consider whether Mr S's redress should be reduced for contributory negligence. I believe Mr S was a victim of a scam and also that he trusted the scammer. But I also have to bear in mind that Mr S transferred substantial sums of money to the scammers in a short space of time. He sent this money to an unregulated business, without seeking any formal financial advice, and without having had any previously dealings with A. It's also not clear whether he did any of his own research or whether he relied solely on the advice of the scammer.

On review of his conversation with the scammer, as early as September 2021, Mr S revealed concerns over the returns being "too good to be true". Mr S also asked the scammer for any legal documentation to guarantee his investments, but the scammer responded that he only had his integrity.

After the scam was discovered Mr S admitted during the chat that "I can't believe I was so stupid not to take note of all the risk signals I identified before investing. It's so obvious but I wanted to believe something too good to be true". He reiterates, "I've been such a fool, the signs were so obvious, but I wanted to believe."

In my view, Mr S ought to have recognised that there was some risk in sending that much money to an unknown and unregulated company in addition to his own concerns over the returns being too good to be true and the lack of any documentation to protect the payments he was making. I think he ignored these warning signs unreasonably. While I sympathise with his position, for the reasons explained above, I still think he should bear some liability for the loss because he hasn't acted reasonably considering all the circumstances of this case. So, I think HSBC can deduct 50% from his redress award in recognition of this.

Mr S says he used money from two of his First Direct savings accounts, a credit card with a third-party provider and sums from an NS&I account to fund the investment. Based on the dates of the payments Mr S has set out, it is my understanding that the two payments I've asked HSBC to refund were made on the 6 and 7 October 2021. And the money used to fund these payments came from the third-party credit card provider (£6,000) and the NS&I Premium bond account (£45,000). Any bonuses or interest on the NS&I account are not guaranteed so I don't intend to award any interest on the amounts Mr S took from this account. But I intend to ask HSBC to pay Mr S, interest on 50% the amount used from the credit card. So, HSBC should refund the interest on £3,000 of the £6,000 Mr S took from his credit card account.

I understand the experience has caused Mr S significant distress and inconvenience. While I am very sorry for the difficulties he has experienced, ultimately it was the scammer who was responsible for his suffering. And whilst I have concluded HSBC most likely could have prevented some of the payments, I've also explained why I think a 50% reduction to the compensation due to contributory negligence is appropriate. Bearing all of this in mind, overall, I'm satisfied the award I have set out here represents a fair outcome to this case, so I don't intend to make an additional award for distress and inconvenience.

Putting things right

HSBC should pay Mr S:

1. A refund of 50% of the payments made by Mr S on the 6 and 7 October 2021.

2. *Refund 50% of the interest Mr S has been charged on the money he took from his third-party credit card provider on the 5 October 2021. Interest should be refunded from the date the payment was made from Mr S's HSBC account until the date it is reimbursed.*

a. *In order for HSBC to calculate the interest, Mr S should provide evidence (such as statements) of the third party credit card account from which the money originated showing the payment being made to his HSBC account and the applicable interest rate.*

If HSBC deducts tax from this interest, it should provide the Mr S with the appropriate tax deduction certificate.

Mr S didn't agree for the following reasons:

- Mr S feels that reducing his redress by 50% is too much and he has been penalised for being honest and providing evidence of his conversation with the scammer. He feels that a lower percentage should be deducted. Mr S has sent in copies of other decisions issued by the service and feels a deduction of 20% is more appropriate.
- Mr S also feels that while there were a few transactions leaving his account amounting to more than a few thousand pounds – these were all post scam and prior to that, the payments leaving his accounts were significantly less. So, he re-iterates that the payment of £5,029 was unusual and ought to have triggered an intervention.
- While Mr S agrees that the bonuses on any NS&I accounts aren't guaranteed, he feels a return of 3% was highly likely.

I've thought carefully about Mr S's comments. I'm very sorry to disappoint Mr S, but each case is decided on the individual merits of that case. And I've set out why I think a deduction of 50% is fair. I reiterate Mr S sent significant sums of money to an unregulated financial business that he had no prior dealings with, without seeking any formal financial advice and without having any documentation to protect his investments. And he appears to have identified the scam was *too good to be true* long before he became aware of the scam but decided to push ahead with sending payments anyway.

I've again thought about whether an earlier intervention may have been warranted based on Mr S's comments and the evidence he has submitted of payments dated prior to the scam. But even on his list of debits, payments of £4,000 and £2,013 debited his account just before the scam payment of £5,029. I do, however, appreciate that many of the transactions are less than £1,500. But, as I explained in my provisional decision, payments need to stand out as *sufficiently* unusual or suspicious to warrant an intervention from a financial business and it's not enough a payment was somewhat larger than the common payments going through his account. In addition, we look at whether there were any other risk factors present that may indicate an intervention is appropriate. For example, payments being sent in quick succession, whether there were any other facts known to the bank such as the payee being mentioned on any scam alerts sent by the UK regulator, scam payments leaving an account significantly in arrears which is unusual for the account conduct. I also have to consider the other information available to HSBC to assess whether an intervention was appropriate. As HSBC explained, the payments sent to C were sent through another UK regulated business.

So, while I've thought carefully about Mr S's concerns, overall, I am still of the view, that there isn't enough here for me to making a finding that HSBC ought to have intervened earlier than the £30,000 payment.

I do understand Mr S's concerns regarding the amounts he took from his NS&I account. And while he may have achieved some return (which may have been higher or lower than 3%),

as explained in my provisional decision, no return was guaranteed. So, I'm afraid my view of this remains unchanged.

Having reviewed everything both parties have submitted, I find no reason to depart from my findings as set out in my provisional decision. I don't doubt how disappointing this will be for Mr S, and I am very sorry he has fallen victim to this scam. But I must reiterate that HSBC didn't scam Mr S and he authorised these payments. While I think HSBC could have done more, I've also explained why I don't think Mr S has acted reasonably as well. So, I'm satisfied the conclusion I've reached is fair and reasonable in all the circumstances of the case.

Putting things right

HSBC must pay Mr S:

1. A refund of 50% of the payments made by Mr S on the 6 and 7 October 2021.
2. Refund 50% of the interest Mr S has been charged on the money he took from his third-party credit card provider on the 5 October 2021. Interest should be refunded from the date the payment was made from Mr S's HSBC account until the date it is reimbursed.
 - a. In order for HSBC to calculate the interest, Mr S should provide evidence (such as statements) of the third party credit card account from which the money originated showing the payment being made to his HSBC account and the applicable interest rate.

If HSBC deducts tax from this interest, it should provide the Mr S with the appropriate tax deduction certificate.

My final decision

For the reasons explained, I uphold this complaint in part. HSBC UK Bank Plc 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 Mr S to accept or reject my decision before 10 October 2023.

Asma Begum
Ombudsman