

The complaint

Mr K is unhappy HSBC UK Bank Plc will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr K brought his complaint through a representative, for ease I will refer solely to Mr K in this decision.

What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Mr K started investing in June 2022 and lost a total of £79,613* from his HSBC account. He says he borrowed from friends and family to fund his investment. Mr K was contacted by a scammer after filling in an inquiry form online. Mr K says the scammer appeared professional and knowledgeable: they set him up with an account on its trading platform (and asked him to download AnyDesk so they could guide him) and he had to upload documentation to verify his identity and residency. He initially made smaller payments that he was able to withdraw which gave him confidence the opportunity was genuine.

As the scam progressed Mr K was persuaded by the scammer to borrow money to fund his investment. He later paid tax to access his investment, and the returns, but the scammer then ceased all contact and Mr K realised he had been scammed. He reported this to HSBC on 3 October 2022. The relevant transactions are set out below. Mr K made bill payments when he moved the money to his Swissborg account and faster payments to his Revolut account.

payment	date	value	recipient - Mr K's account at:
1	29/06/2022	£1,000	Swissborg
2	29/06/2022	£1,000	Swissborg
3	29/06/2022	£1,000	Swissborg
4	01/07/2022	£5	Swissborg
5	02/07/2022	£1,000	Swissborg
6	02/07/2022	£1,000	Swissborg
7	02/07/2022	£500	Swissborg
8	03/07/2022	£2,495	Swissborg
9	06/07/2022	£1,000	Swissborg
10	07/07/2022	£1,000	Swissborg
11	13/07/2022	£10,000	Swissborg
12	14/07/2022	£10,000	Swissborg
13	15/07/2022	£10,000	Revolut
14	22/07/2022	£11,900	Revolut
15	22/07/2022	£2,000	Revolut

16	26/07/2022	£8,000	Revolut
17	02/08/2022	£1,000	Revolut
18	02/08/2022	£1,750	Revolut
19	18/08/2022	£10,000	Revolut
20	21/09/2022	£3,063	Revolut
21	28/09/2022	£4,900	Revolut

**The payments listed total £82,613. On 1/7/2022 Mr K withdrew £2,997 from his Swissborg account and paid £3,000 back into his HSBC account, via a bank account he held elsewhere.*

HSBC said the money was moved to accounts in Mr K's name that he had sole control of and it contacted Mr K to provide fraud warnings when he was setting up the payments. It had made no errors.

Our investigator upheld Mr K's complaint in part. He noted HSBC had intervened on 2 July 2022 at the time of payment 6. But he felt that intervention ought to have led HSBC to ask for more information, and that this would have prevented Mr K falling victim to the scam from this point onwards. He found, however, that Mr K was in part liable for his losses so he reduced the value of the refund he said HSBC must pay.

Mr K accepted this assessment. HSBC did not reply.

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.

There's no dispute that Mr K made and authorised the payments. Mr K knew who he was paying, and the reason why. At the stage he was making these payments, he believed he was transferring funds to invest in stocks and shares via a cryptocurrency account. I don't dispute Mr K was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mr K's instructions. So in the first instance Mr K is presumed liable for his losses. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were to accounts in Mr K's name the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that HSBC should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some

cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case, I need to consider whether HSBC acted fairly and reasonably in its dealings with Mr K when he made the transfers, or whether it could and should have done more before processing them.

Did HSBC act fairly and reasonably in Mr K's case?

HSBC made a direct intervention at the time of payment 6. I think this was appropriate as it took the amount of money Mr K had moved to his Swissborg account in four days to £5,000 and this was out of character for his account. I note it had provided online investment scam warnings from the outset on 29 June 2022.

I have listened carefully to the call between the parties on 2 July 2022. I am not persuaded it was as effective as it ought to have been. Whilst it seems a fraud prevention script was diligently followed, I think there were red flags that HSBC did not pick up on and at times it moved too rapidly onto the next question rather than reacting to, and thinking about, Mr K's previous reply. As the investigator concluded, HSBC should have been concerned Mr K was using loan proceeds to fund his high-risk investment. And Mr K did not seem to have done any proper due diligence – only saying friends at work had taken advantage of the same opportunity. He also indicated he was feeling under financial pressure due to the current cost of living crisis. And that he had just started this kind of investing.

I think had HSBC reacted differently to Mr K's replies to its questions the scam could have been uncovered. For example, when it asked if Mr K had checked the investment firm was regulated Mr K didn't give a clear answer. He seems to say yes – but as he had read all of the information on the firm's website. I think it ought to have concerned HSBC that he had not independently verified the firm. I appreciate Mr K had been coached to an extent by the scammer but there were simple questions HSBC ought to have asked (for example, what rate of return was Mr K expecting, why did he need to open a crypto wallet to invest in stocks and shares?) that Mr K would most likely not have been able to answer, and which should have led HSBC to more explicitly warn Mr K that this sounded like a scam. I have no reason to think Mr K would not have listened to a more assertive and bespoke warning given he was already worried about his finances.

By this time, banks had, or ought to have had, a good enough understanding of how these type of investment scams work – including that a customer often moves money to a crypto account in their own name before moving it on again to the scammer and that the scammer often returns funds early in the scam to generate confidence – such that it ought to have been able to identify the risk of harm from fraud here.

I am satisfied Mr K would have had second thoughts if HSBC had intervened effectively. I don't find it fulfilled its role as the expert on fraud prevention during its intervention.

Had it done so I think Mr K would not have gone ahead with payment 6, nor any subsequent payments.

Did HSBC do enough to recover Mr K's funds?

I can see HSBC contacted Swissborg two days after Mr K reported the fraud to try to recover the funds but there were no funds available. Whilst we would expect this to have happened faster, as the money had already been moved to another wallet prior to Mr K reporting the fraud it would have made no difference. As the other payments were made to an account in

Mr K's name that he had moved on to invest, I do not find HSBC could have done anything to recover those funds.

Should Mr K bear some responsibility for the overall loss?

I've considered carefully whether Mr K should hold some responsibility for his loss by way of contributory negligence. I think he should, there are a few reasons for this:

- Mr K carried out minimal checks on the investment opportunity – he now says he wasn't aware of the FCA (Financial Conduct Authority) at the time but he did not disclose that on the call on 2 July 2022. He seems to have been willing to invest significant sums without an appropriate level of due diligence.
- Mr K was willing to conceal facts from HSBC - he said he had set up the e-wallet on his own when he had in fact downloaded software to give the scammer access to his technology.
- Mr K took out a loan for £18,000 during the scam and gave a false reason for this loan (home improvements).

I am therefore instructing HSBC to refund only 50% of Mr K's losses, after first deducting 50% of the losses he suffered by transferring money to Revolut to ensure the division of losses is equitable.

Putting things right

HSBC must refund Mr K £26,150.75. This is the sum of 50% of payments 6 to 12 (£12,997.50) and 25% of payments 13 to 21 (£13,153.25). There is no interest award as Mr K has told us he funded the payments by borrowing from friends and family. As they are not party to this complaint I cannot award them compensatory interest.

My final decision

I am upholding Mr K's complaint in part. HSBC UK Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 October 2023.

Rebecca Connelley
Ombudsman