

The complaint

Mr I complains that HSBC Bank Plc ('HSBC') won't refund the money he lost as a result of an investment scam. He's being supported by a representative. To keep things simple, I'll refer to Mr I throughout this decision.

What happened

The background to this complaint is known to both parties, so I won't repeat all the details here. In summary, Mr I says:

- He was looking to invest in crypto-currency and was the victim of two scams between June 2020 and November 2021, each of which he thinks was run by a different scam broker who'd been given remote access to his laptop and carried out trades on his behalf.
- The first scam began in June 2020 after he was contacted by someone claiming to work for 'INVcenter' (scam 1) and they persuaded him to trade in crypto-currency using the various crypto-exchanges he'd been instructed to open in his name.
- He stopped sending payments after contracting Covid-19 in October 2020. But started to 'invest' again when contact was re-established with scam 1, in May 2021. By that point, their platform showed his investments had grown to £100,000 and he was led to believe he could potentially make seven-figure returns. At around that time, he was contacted by a second scam broker, 'BluePrint Capital' (scam 2), and he decided to trade primarily with them because of difficulties he'd experienced with withdrawing funds from scam 1.
- A number of payments were sent to scam 2 over two weeks, during June 2021, until he saw those investments fall in value. He was then unable to contact the scammer to close his account or withdraw funds but continued to invest with scam 1 until November 2021.
- He realised he'd been scammed when he received an email from scam 2 saying his account had fallen to zero; and scam 1 had taken £55,000 directly from his Coinbase account without his permission and insisted he need to pay more for a withdrawal.

Over £250,000 was sent from Mr I's HSBC accounts between June 2020 and November 2021. These were mainly bill payments with some credit card and debit card payments. I understand some of the money was borrowed from family and friends and that Mr I received some credits from the scams leading him to believe he could withdraw profits. I've listed below the payments (and credits) I've considered as part of this complaint. Those listed in bold relate to payments Mr I says were sent to scam 2.

	Date	Payee/Sender	Amount	Account/Payment type
1	10-Jun-20	EDU Tallin	£219	Credit Card
2	05-Oct-20	CB Payments Ltd	£2	Bill Payment
3	06-Oct-20	CB Payments Ltd	£6,000	Bill Payment

4	06-Oct-20	from Coinbase	£5,765	Credit
5	06-Oct-20	Binance	£6,002	Bill Payment
6	15-Oct-20	Binance	£11,000	Bill Payment
7	15-Oct-20	Binance	£220	Bill Payment
8	15-Oct-20	Binance	£3,300	Bill Payment
9	05-May-21	Binance	£3,000	Bill Payment
10	06-May-21	Binance	£1,400	Credit Card
11	06-May-21	Binance	£1,400	Credit Card
12	06-May-21	Binance	£1,400	Bill Payment
13	17-May-21	Binance	£10,000	Bill Payment
14	17-May-21	Binance	£1,650	Bill Payment
15	14-Jun-21	Binance	£5,000	Bill Payment
16	15-Jun-21	from Binance	£150.77	Credit
17	15-Jun-21	Binance	£25,000	Bill Payment
18	16-Jun-21	Binance	£10,000	Bill Payment
19	19-Jun-21	Global DLT	£2,850	Credit Card
20	21-Jun-21	Binance	£5,000	Bill Payment
21	22-Jun-21	Binance	£8,000	Bill Payment
22	24-Jun-21	Global DLT	£1,800	Credit Card
23	23-Jun-21	Binance	£7,000	Bill Payment
24	28-Jun-21	Binance	£1,500	Bill Payment
25	28-Jun-21	Global DLT	£1,500	Visa Card
26	05-Jul-21	from Binance	£2,951.53	Credit
27	06-Jul-21	CB Payments Ltd	£2,500	Bill Payment
28	08-Jul-21	CB Payments Ltd	£50	Bill Payment
29	09-Jul-21	Global DLT	£1,000	Visa Card
30	15-Jul-21	Clearbank Ltd	£380	Open Banking
31	16-Jul-21	Clearbank Ltd	£650	Open Banking
32	16-Jul-21	Revolut	£200	Open Banking
33	19-Jul-21	Global DLT	£2,850	Credit Card
34	20-Jul-21	Revolut	£650	Open Banking
35	22-Jul-21	CB Payments Ltd	£10,000	Bill Payment
36	22-Jul-21	CB Payments Ltd	£10,000	Bill Payment
37	27-Jul-21	Payward Ltd	£10	Bill Payment
38	27-Jul-21	CB Payments Ltd	£10,000	Bill Payment
39	30-Jul-21	Revolut	£400	Open Banking

40	02-Aug-21	Revolut	£100	Open Banking
41	10-Aug-21	CB Payments Ltd	£500	Bill Payment
42	11-Aug-21	CB Payments Ltd	£20,000	Bill Payment
43	12-Aug-21	CB Payments Ltd	£15,000	Bill Payment
44	12-Aug-21	CB Payments Ltd	£5,000	Bill Payment
45	12-Aug-21	<i>from Coinbase</i>	<i>£500</i>	<i>Credit</i>
46	13-Aug-21	CB Payments Ltd	£1,000	Bill Payment
47	13-Aug-21	CB Payments Ltd	£950	Bill Payment
48	18-Aug-21	CB Payments Ltd	£5,125	Bill Payment
49	24-Aug-21	CB Payments Ltd	£5,000	Bill Payment
50	06-Sep-21	Payward Ltd	£390	Bill Payment
51	08-Sep-21	Payward Ltd	£500	Bill Payment
52	23-Nov-21	CB Payments Ltd	£25,000	Bill Payment
53	24-Nov-21	CB Payments Ltd	£15,000	Bill Payment
54	24-Nov-21	Payward Ltd	£2,100	Bill Payment
55	25-Nov-21	CB Payments Ltd	£15,000	Bill Payment
56	27-Nov-21	<i>from Payward Ltd</i>	<i>£2,100</i>	<i>Credit Reversal of payment 54</i>

The scams were reported to HSBC in March 2022. A complaint was raised and referred to our Service in May 2022. Our Investigator reviewed it and upheld it. He found HSBC should have intervened on payment 5 for scam 1 and payment 17 for scam 2. He recommended refunds with a 50% deduction for contributory negligence for scam 1 and no deduction for scam 2, with interest at either 8% simple or, if from a savings account, at the account rate from which the funds originated. He said no interest should be paid on money Mr I had borrowed from family and friends. Mr I accepted the Investigator's outcome. HSBC did not.

In summary it said:

- The payments were made to Mr I's own accounts which he had access and control over (me-to-me). And it's not clear how it was expected to identify that the payments were to crypto-currency or a particular merchant as they were mainly bill payments. All it would have seen was a sort code and an account number.
- The second payment on 6 October 2020 wasn't unusual taking into account Mr I had regularly paid large sums of over £10,000. On 8 January 2020 he made an external payment of £76,194. On 12 November 2019 he made an internal transfer of £57,000.
- Mr I was taken in by a persuasive scam and would have made payments regardless of any intervention. He'd been dealing with scam 1 for some months before the points of intervention suggested by the Investigator. By October 2020, Mr I thought he was making substantial profits and was able to make a significant withdrawal.
- He was provided with warnings on several occasions. The unsolicited emails, the cold calling, the pressure to invest, the scammer's odd statements and request for large commission payments were red flags that should have caused Mr I concern.
- Mr I didn't carry out sufficient due diligence. A warning was published about scam 1 in July 2020 and a negative review about scam 2 in June 2021. If upheld, a deduction for

contributory negligence ought to apply to any refund as a whole. Interest should be at the account rate as Mr I would have likely invested in a high-risk investment.

As the case couldn't be resolved informally, it was passed to me to decide.

I issued my provisional decision to both parties in January 2024. In brief, I said I was minded to uphold this complaint but that Mr I should bear some responsibility for his losses. I provided the following reasons:

Authorisation

It's not in dispute Mr I was scammed and I'm sorry about the impact the whole experience has had on him. It's also not in dispute that he authorised the payments from his HSBC accounts. So, although he didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, Mr I is presumed liable for his losses in the first instance.

Prevention

There are, however, some situations in which a bank (such as HSBC) should, taking into account relevant rules, codes and best practice, have reasonably taken a closer look at the circumstances of a payment – if, for example, it's particularly unusual or out of character.

In this respect, I've thought about what HSBC has said on the payments being sent to Mr I's own accounts with legitimate crypto-currency exchanges. But I think it's also necessary to consider that, by the time Mr I started his payments, HSBC ought to have had a good understanding of how these scams take place, including the potential of 'multi-stage' fraud where funds are first moved through one or more accounts in the customer's own name before they're sent to the scammer. I also note its comments that it had limited information about the recipients of the bill payments. But that doesn't mean HSBC shouldn't still have been on the look-out for anything suspicious about the spending activity itself.

In my view, looking at the account history, there did come a point where the activity ought to have appeared unusual enough for HSBC to have made additional enquiries. I'm however minded to reach different conclusions to the Investigator as to the points of intervention:

- *For scam 1, I consider HSBC should reasonably have done more to protect Mr I from the risk of financial harm, and done so effectively, by questioning him about the payment of £3,300 on 15 October 2020, given this was the third payment to the same payee that same day and it also took the daily spend to a significant amount. I agree the earlier external payments Mr I had made are a relevant consideration here, so I don't think the transactions before payment 8 (above) would have appeared as particularly unusual.*
- *For scam 2, I think it would be reasonable to conclude there should be no second trigger point, given the timing and how closely interlinked these scams were, if an effective and successful intervention had taken place on scam 1. I note, for example, scam 2 had similar features and ran parallel to scam 1, and Mr I says he intended to use profits from scam 2 to cover outgoings on scam 1.*
- *There was nothing about the credit card payment in June 2020 that would reasonably have warranted an intervention.*

Causation

I've considered how things would have likely unfolded if HSBC had questioned Mr I directly about the nature of payment 8 and I note HSBC believes he would have continued to send

payments irrespective of any warning it may have given. This is on the basis that by October 2020, Mr I had been dealing with scam 1 for some months; an intervention wouldn't have broken the spell; the prospect of making substantial profits was appealing; and the ability to make a withdrawal would have reassured him as to the legitimacy of the 'investment'. I also recognise he was later provided with several written warnings and he'd been willing to follow the scammers' instructions to open accounts with various crypto-exchanges as well as borrow funds.

That said, however, if HSBC had stepped in and asked Mr I probing questions about the circumstances surrounding payment 8 then, on balance, I think he'd have been upfront about what he was doing and the scam would have likely been unravelled. I've seen nothing to suggest he was coached by the scammer on what to say for his payments to go through without issue or that he was untruthful when, for example, he was called into branch to authenticate one of his transactions. And if HSBC had spoken to him at that time about what was happening, it could have alerted him to the Financial Conduct Authority's (FCA) warning for scam 1. It could also have alerted him about the aspects commonly associated with this type of scam, including the use of crypto-currency and remote access, unsolicited contact, and the withdrawal tactics often used to entice customers into paying more.

I'm not convinced Mr I would have continued payments to scam 1 after a serious warning from HSBC about what his particular situation looked like. With this in mind, and given what I've said above on how closely connected the scams were, I think it's also reasonable to conclude scam 2 wouldn't have happened following a successful intervention on scam 1. Mr I would have likely been aware by this point he'd never be able to withdraw his money from scam 1, and so wouldn't have sought further investment with scam 2 to be able to fund payments to scam 1. I'm therefore satisfied HSBC's failure to intervene effectively has caused Mr I a loss here, such that it would be fair and reasonable to hold it responsible for the payments that could have been prevented from and including payment 8.

Contributory negligence

The concept of contributory negligence centres around whether or not a consumer should have done something to mitigate their losses or should share some responsibility for them.

With respect to scam 1, I've thought about the reasons Mr I has given for believing he was dealing with a genuine broker. But it's also fair to say that by October 2020 he was sending significant amounts to someone he knew little about. In the circumstances, and given the sums involved, I'd reasonably have expected Mr I to carry out some due diligence into the 'investment' – and, on balance, I'm not persuaded that he did. I've already mentioned the FCA's notice warning customers about scam 1 and of the lack of protection on the basis of it being unauthorised, and I can't overlook that he seemingly went on to pay no attention to the alerts HSBC says were given (albeit from May 2021) which, for example, warned against shared access to crypto wallets and unrealistic returns.

It's important for me to add here that, according to Mr I, he had concerns as early as October 2020 that several of his withdrawal requests had been unsuccessful. I think this should have signalled (and apparently did signal) something wasn't quite right about the 'broker' he was dealing with and it should have prompted him to carry out some independent research into what he was experiencing. It's clear from the messages exchanged with the scammer that these problems persisted throughout 2021, as soon as contact was re-established.

In terms of the payments Mr I made to scam 2, the Investigator found there should be no deduction for contributory negligence as there was little information available at the time to alert Mr I of the possibility that this too was a scam. I'm not sure the link HSBC has since provided to a negative review published in June 2021 was something Mr I would have

readily seen at the time. But I think it's again relevant here that according to Mr I he: "wanted to use another investment platform as he noticed every time he tried to withdraw his funds with [scam 1], he was informed he needed to deposit more money" and was told "if he invested with [scam 2] he would receive quick turnarounds and he could withdraw weekly".

In other words, it seems to me Mr I was sufficiently worried about the lack of withdrawals from scam 1, that despite the profits he believed he was making, he took steps to engage with scam 2 so he could invest and access his money. I've seen little to evidence what Mr I did to satisfy himself that the access he was promised (which was understandably important to him) was available and that he wouldn't be left in the same position he found himself with scam 1. Instead, he seemingly went on to send over £60,000 to scam 2 over a two-week period in June 2021. I think it was unreasonable to risk committing such significant amounts without verifying the information he says he was given or again first carrying out some independent research into the repeated problems he'd encountered.

I'm therefore minded to conclude Mr I should bear equal responsibility for the money he lost as a result of both scams. In reaching this view, I've thought carefully about the information that's been shared regarding Mr I's vulnerabilities and how these may have affected his decision-making. I'd like to thank Mr I for everything he's told us and I recognise he's been through a particularly difficult time. On the evidence, however, I'm not persuaded there's enough for me to say his judgment was impaired during the entire period in question, or that he wouldn't have been able to protect himself against these sorts of scams, to the extent that he shouldn't be equally liable for his losses. The messages I've seen, for example, suggest Mr I was able to progress the sale of a property. There were also no apparent concerns around his capacity to make decisions by family members from whom funds were borrowed.

Recovery

In general, a business should attempt to recover lost funds once a scam has been reported. In this case the transfers and card payments were sent to exchanges or accounts in Mr I's name before being forwarded to the scammer. It's unlikely HSBC would have been able to facilitate a recovery of that money through a chargeback claim. For the first credit card payment in June 2020, I can't see Mr I has raised a section 75 claim. That option is open to him, but he'd need to raise this with HSBC in the first instance before we can get involved.

Putting things right

To put things right, I'm minded to direct HSBC Bank Plc to:

- Refund 50% of the payments Mr I made towards both scams from and including payment 8 minus any credits Mr I received.*
- For the payments made from the current account, pay interest from the date of each of those payments to the date of settlement. Interest is to be calculated at the rate of any savings account from which the funds originated or at 8% simple interest per year if the payments originated from a current account. No interest is to be applied on any funds borrowed from family and friends. I'm not persuaded there's enough evidence to conclude any interest should be paid at the account rate on the basis that Mr I would have likely invested all the funds in a high-risk investment.*
- For the credit card payments, it's not clear if the total balance of the disputed payments has since been paid off. Generally, if the scam balance has been repaid, then HSBC should refund the disputed payments and pay 8% simple interest per year from the date the balance was repaid until the date of settlement. If the total balance hasn't been repaid, HSBC should remove any remaining balance incurred as a result of a scam,*

refund any repayments Mr I made towards that balance as well as associated interest and charges, and pay 8% simple interest per year on top of the repayments he's made.

- *I'll consider any more evidence from either party as to what balance remains outstanding in relation to the disputed credit card payments. But if neither party provides information which confirms the situation, I'll assume the balance has been paid off, in which case I'll be asking HSBC to refund the payments plus 8% simple interest per year from the date they were repaid until the date of settlement.*

Responses to my provisional decision

I invited further comments and evidence from both parties. Mr I responded to say he accepts my provisional decision. HSBC hasn't responded.

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.

Given that neither party has added anything further for me to consider in response to my provisional decision, I see no reason to depart from the conclusions I reached, as set out above. It follows that I uphold this complaint.

Putting things right

To put things right, I direct HSBC Bank Plc to:

- Refund 50% of the payments Mr I made towards both scams from and including payment 8 minus any credits Mr I received.
- For the payments made from the current account, pay interest from the date of each of those payments to the date of settlement. Interest is to be calculated at the rate of any savings account from which the funds originated or at 8% simple interest per year if the payments originated from a current account. No interest is to be applied on any funds borrowed from family and friends.
- For the credit card payments, refund those payments plus 8% simple interest per year from the date they were repaid until the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 March 2024.

Thomas Cardia
Ombudsman