

The complaint

Mr S complain that HSBC UK Bank Plc (HSBC) won't refund any money he lost in an investment scam.

What happened

What Mr S says:

Mr S was looking to find ways of improving income for his family. He received a WhatsApp message from someone he didn't know. The caller said she was trying to contact someone to give her investment advice.

Mr S got talking with the caller on WhatsApp messaging. She put to him a business proposal which seemed like an opportunity which was too good to miss. He was told he could invest small sums of money to start with. The money was sent to a crypto exchange and from there to an investment firm (which turned out to be fake).

The scammer said she would be making investments on his behalf – which he agreed to as he was inexperienced. In September 2022 and October 2022, Mr S made three payments to the crypto exchange, and received a credit for £4,300 – which he thought confirmed the scheme was genuine.

	Date	Payment	Amount
1	21 September 2022	Faster payment – crypto exchange	£10,000
2	22 September 2022	Debit card payment – crypto exchange	£14,418.60**
	<i>5 October 2022</i>	<i>Credit – crypto exchange</i>	<i>(£4,300)</i>
3	12 October 2022	Faster payment – crypto exchange	£12,000
	Total net loss		£32,118.60

**** this complaint**

Then, in November 2022, Mr S wanted to make withdrawals from his 'trading account' but was asked to pay a fee of over £30,000 – he then realised he had been the victim of a scam.

Mr S says the payments were unusual for him. HSBC didn't ask him any questions that would've uncovered the scam. He says HSBC read out a script. He says HSBC should refund the money he's lost.

Mr S' complaint about faster payments one and three have been reviewed separately by our service and that complaint wasn't upheld. So – this complaint is about payment number two – the debit card payment for £14,418.60

What HSBC said:

HSBC said it was difficult to see why Mr S would trust someone who he didn't know and who made contact via an unknown source.

HSBC spoke to Mr S about the first payment for £10,000 and he confirmed the payment to be genuine. An SMS message was sent to Mr S about the debit card payment and he confirmed the transaction. If he had said 'no', then HSBC would've contacted him. HSBC noted that there were online scam warnings about the investment firm.

HSBC didn't refund any money.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it. He said that it was reasonable to have expected HSBC to have intervened in the debit card payment. But had they done so, it was unlikely that the payment would've been stopped.

That was because on the calls on 21 September 2022, and then on 12 October 2022, HSBC couldn't have been expected to have suspected a scam was taking place. The bank gave Mr S the relevant warnings and based on what Mr S said, there was nothing obvious for the bank to be concerned about. On the calls:

- Mr S was warned to check who he was sending money to.
- Mr S was warned that HSBC wouldn't be liable if it turned out to be a scam.
- Mr S confirmed no third party had asked him to make the payment or contacted him about it.
- The bank offered more time for Mr S to consider if he wanted to go ahead, but each time, he said he wanted to.

So, if HSBC had spoken to Mr S about the debit card payment, he would've gone ahead anyway.

Mr S didn't agree. He said - if HSBC had asked more probing questions, the scam would've been uncovered. He had looked at the FCA's website and online reviews and found nothing to be concerned about. (**continued**)

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.

I'm sorry to hear that Mr S has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr S didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr S when he made the payment, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – and in this case, the payment was made by debit card.

If the payments were of a sufficient size and were out of character with how Mr S normally used his account – then we would expect HSBC to have intervened and spoken to him. I looked at Mr S' account - and it's fair to say that the payment in question was much larger than he was used to making. The account was used to receive small credits and make small value day to day payments.

So - it is reasonable to have expected HSBC to have intervened. The bank did so for the first payment on 21 September 2022 (for £10,000), but not for the debit card payment - which is the subject of this complaint and decision.

And here, it is reasonable for me to review the conversations that took place when HSBC spoke to Mr S on 21 September 2022 (the day before the debit card payment) and then again on 12 October 2022 (shortly afterwards). It is reasonable to say that Mr S' responses were very likely to have been the same if HSBC had contacted him on 22 September 2022.

On the two calls, it is relevant to note:

- In response to how Mr S had come to make the payment, he said he had made payments to the crypto exchange before.
- He said he had done his research, including looking at the FCA's website. He said he had researched for six months up to this point; and had taken advice.
- He was asked if anyone had told him how to respond to the bank's questions – Mr S said 'no'.
- He was asked if someone asked him to make the payment. Mr S said 'no'.
- Mr S further said that 'no one has contacted me about this'.

- Mr S was asked if he needed more time to consider the payments – each time he said he wanted to go ahead.
- Each time, HSBC gave him a warning that the bank would not be liable for the payments if it turned out to be a scam.

I consider that taken together and on balance, HSBC's intervention questions (and Mr S' responses) went far enough for HSBC to conclude that the payment could be made.

And therefore, I don't consider HSBC is liable to refund any money to Mr S.

Recovery: We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. Mr S contacted the bank in January 2023 to report the scam.

And here, the funds went from the bank account to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

I'm sorry Mr S has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold HSBC responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 February 2025.

Martin Lord
Ombudsman