

The complaint

Mr B complains that HSBC UK Bank Plc (HSBC) won't refund the money he was tricked into transferring to a fraudster.

What happened

Mr B was introduced to an investment opportunity by an acquaintance he met online. I'll call the acquaintance A for ease.

Mr B describes the investment as being in forex trading. It was being offered by a company (that I'll call L) which was said to be regulated by the National Futures Associations (NFA).

A assured Mr B she'd guide him through the trading platform, and he'd learn how to trade at the same time, as he was a first time trader. He didn't receive any documentation or formal agreement for the investment. But he'd understood from A that she'd made substantial profits from trading herself. Mr B says he researched L online and found positive reviews but sought no independent advice.

Mr B had access to a functional trading platform, and he proceeded to make two payments towards the investment. I've included the details of these payments below:

Date & Time	Transaction	Amount
31/3/2021 12:15	International transfer	£389 + £4 fee
01/4/2021 13:14	International transfer	£3,500 + £4 fee

Both payments went to the same account held at an overseas bank. Mr B explained he thought he'd made around \$26,000 from his investment but when he tried to withdraw this, he was unsuccessful and eventually he lost access to the platform and communication ceased. At this point he realised he'd been scammed.

Mr B says he reported he'd been the victim of a scam to HSBC in June 2021. But HSBC says it received Mr B's scam report by letter on 29 September 2021. HSBC opened a scam case for Mr B on 4 October 2021, and it contacted the overseas bank Mr B paid the following day. However, the beneficiary bank confirmed that it didn't have authority to debit the account for the amount of £3,500. It didn't respond regarding the £389 payment.

HSBC declined to reimburse Mr B because it said as the payment was sent overseas, it would not be considered under the Contingent Reimbursement Model (CRM) Code which HSBC is a signatory of. The CRM Code sets out that customers who have fallen victim to a scam (like Mr B) should be refunded in all but a limited number of circumstances.

Mr B complained to HSBC as he thinks it should implement more robust security measures to protect its customers from scams. And he shared that he's suffered emotionally, financially and psychologically as a result of the incident.

HSBC's response to Mr B's complaint was in keeping with the outcome to his fraud claim. It declined to reimburse him for the same reasons. But it did acknowledge that it failed to send Mr B a letter with the outcome of his claim in October 2021, and it gave him incorrect information when he phoned HSBC in December 2021. It offered Mr B £75 compensation for these errors. Mr B did not accept this, so it was not paid.

Mr B referred his complaint to our service and our Investigator upheld it in part. They agreed HSBC had not provided the service expected of it when Mr B reported his concerns, and so they recommended HSBC award Mr B a total of £150 compensation (including the £75 it had already offered). However, they did not find HSBC to be liable for money Mr B lost to the scam. Our Investigator said HSBC had no reason to suspect Mr B was falling victim to a scam as the activity didn't appear to be out of character or unusual.

Mr B did not agree with our Investigators recommendations. He made extensive comments in response to the assessment issued. Whilst I might not comment on each and every point raised, I've carefully considered all of the points Mr B raised and I've summarised these below:

- HSBC should fairly and reasonably have had systems in place to look out for out-of-character or unusual transactions, or other signs that might indicate that its customers were at risk of fraud.
- HSBC should be aware of the tactics often utilized by fraudsters, such as transferring large sums of money to international accounts outside the UK in a short period of time. The payments involved a series of payments to a new payee and there was no previous record of him transacting in cryptocurrency. HSBC should have suspected that the payments related to fraud.
- HSBC ought to have had enough knowledge of the common features of investment scams. And had a warning been given, Mr B would have paused and looked more closely into L and such scams before proceeding.
- He isn't persuaded HSBC asked sufficient probing questions or gave any warnings about investment or cryptocurrency scams.
- He had previously fallen victim to a scam and HSBC was aware of this.
- The treatment from HSBC compounded by trauma and anxiety has left him in an awful situation. He doesn't think the compensation recommended by our Investigator fairly reflects the impact he suffered due to HSBC's errors.

As no agreement could be reached, this can was passed to be for a decision to be issued.

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.

Having done so, I agree with the outcome our Investigator reached and for broadly the same reasons. I'll explain why.

Mr B acknowledges that he carried out the transactions in dispute, albeit he was tricked into doing so. Under the relevant regulations, namely the Payment Services Regulations 2017 (PSR 2017), Mr B is presumed liable for transactions he has authorised in the first instance. But that's not the end of the story. There are some circumstances in which a firm like HSBC might be liable for payments which a customer has been tricked into authorising as part of an authorised push payment (APP) scam.

I've thought about whether the payments should be considered under the CRM Code which HSBC is a signatory of. I know this will be disappointing for Mr B, but I'm not persuaded there are any reasonable grounds to apply the provisions of the CRM Code to his case. I say this because Mr B has made the payments to an account overseas. The CRM Code says:

"This Code applies to Customers undertaking Payment Journeys as defined in DS1(2)(k):

(a) between GBP-denominated UK-domiciled accounts, by any channel of push payment available to the Customer, such as in branch, on the phone, or online."

This means the CRM Code does not cover international payments. Whilst Mr B has made extensive comments in his submissions about why HSBC ought to refund him in light of R2(3) under the CRM Code (the provisions for vulnerable consumers), I'm afraid this does not apply as the CRM Code is not a relevant consideration of his case for the above reasons. Similarly, nor does the expectation on HSBC to provide Mr B with an Effective Warning when he made these payments, as this also a requirement of the CRM Code.

However, 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 made 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've considered the circumstances of this case carefully and whilst I'm sympathetic towards Mr B's circumstances, I don't find that HSBC can be fairly held liable for his loss.

Firms process hundreds of thousands of transactions on a daily basis, and so it wouldn't be reasonable to expect it to intervene on each and every one. Instead it should do so where it identifies a transaction that is otherwise out of character and unusual, considering that particular customer's account usage and known patterns of fraud.

I've reviewed Mr B's statements over the period of the scam, and over 12 months leading up to the first disputed payment. In doing so, I can see the account has not been used as frequently as one might expect for a current account. In fact, there are just 14 transactions made (plus associated transaction fees) in these 12 months. Of these 14 transactions, 10 of them are international transactions; either international card payments or international bank transfers. I therefore don't consider the nature of the transaction to be out of touch with previous account activity.

In considering the value of the disputed payments, with particular attention to the second payment made for £3,500, I do appreciate that this transaction is larger than the previous spending on Mr B's account. However, like our Investigator I do not think it's unusual for

individuals to make one off large transactions from time to time. And his statements show that in March 2020 (12 months prior to the scam), he did make a comparable international transfer of £2,000. So whilst the second disputed payment is the largest debit on the account, it's not materially different to previous transactions in nature or in value.

Mr B feels strongly that a pattern emerged here which ought to have been indicative of fraud, however I don't agree. HSBC needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. I am not persuaded that the transactions in dispute, appeared out of character or unusual in the context of Mr B's prior usage, or known fraud patterns, to the extent that it ought to have intervened. Nor am I persuaded that the fact it was to a new international beneficiary made it remarkable enough for the bank to have reasonably identified Mr B was at risk of financial harm from fraud. There was also nothing to deduce from the payment details that Mr B was making these payments towards an investment or cryptocurrency. And whilst Mr B says he has been the victim of a scam before, HSBC has no record of him ever reporting a prior scam. So, I have seen no evidence to suggest HSBC ought to have been on notice Mr B was more susceptible to scams due to having been scammed before.

Taking these things into account, I'm not persuaded HSBC made an error in allowing these transactions to be made without intervening.

Recovery of funds

Mr B says he reported the scam in June 2021. HSBC's complaint notes show that it identified a phone call from 28 June 2021 in which Mr B reported the scam, and the note suggests Mr B came away from that call thinking the bank will be reporting it. I have not been provided with this call, but I've seen notes left by HSBC about what was said in this call. So it does seem HSBC failed to raise Mr B's scam claim in a timely manner, and it did not contact the beneficiary bank until 5 October 2021.

However, I don't believe this made any material difference to the success of the retrieval of Mr B's funds. HSBC contacted the beneficiary bank, and it confirmed it didn't have permission to debit the account he'd paid. It also didn't respond to the second recovery attempt. As Mr B sent the funds to an overseas bank, it's not bound by the same rules and regulations as UK banks. So recovery of funds can only be attempted on a best endeavours basis, and should it prove unsuccessful there is nothing further HSBC could reasonably do to retrieve his funds. Furthermore, Mr B reported the scam in June, but he made the last payment on 1 April 2021. I think, even if the beneficiary bank was prepared to return the money, it would be highly unlikely that any funds remained in the beneficiary account, almost two months later.

Service issues

I appreciate Mr B feels let down by HSBC and I agree it has made some failings in terms of the service it provided. HSBC admits it failed to send Mr B the outcome to his claim promptly. And it gave him incorrect information when he phoned HSBC in December 2021 about contacting another bank it suspected to be involved in the payments. Mr B also says he found HSBC's communication to be ineffective.

Our Investigator has recommended HSBC pay a total amount of £150 compensation. This amount is including the £75 HSBC offered in the final response letter, which has not yet been paid because Mr B didn't accept it at the time.

I've thought carefully about the circumstances of this complaint, and I agree that this is fair and reasonable. Whilst I don't doubt these errors frustrated Mr B, I don't agree HSBC

unfairly declined his claim, nor do I agree it could have prevented his loss. So there would have always been a degree of distress and inconvenience experienced here.

Mr B has claimed HSBC has impacted his ability to explore alternative options promptly. It's not clear what he means by this, but I'm also mindful it took Mr B two months to report the scam to HSBC, and a further two months to follow up with HSBC in late September after he'd not heard back since June. Overall, I've seen no evidence that HSBC's delays have had a material impact to Mr B's ability to recover the money.

My final decision

For the reasons I've explained above, I uphold this complaint against HSBC UK Bank Plc in part.

If Mr B accepts my decision, HSBC UK Bank Plc should:

- Pay £150 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 March 2024.

Meghan Gilligan
Ombudsman