

The complaint

Mr S has complained that HSBC UK Bank Plc (“HSBC”) will not refund the money he lost as the result of a scam.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. Mr S was approached by company that I will call B who purported to be a trading company. Mr S contacted B and subsequently sent funds to it via bank transfer. The payments were as follows.

Transaction Number	Date	Amount	Type of Payment
1	18 February 2019	£7,781.91	Faster Payment
2	20 March 2019	£37,671.85	Faster Payment
3	21 March 2019	£37,671.85	Returned Payment
4	25 March 2019	£37,671.85	Faster Payment
5	9 April 2019	£38,119.86	Faster Payment

Mr S tried to withdraw some of his “profits”. He says he was unable to do so and therefore he realised that he had been scammed. Some years later Mr S raised a fraud claim with HSBC but it rejected his claim.

I issued a provisional decision on 17 July 2024 in which I said the following;

“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 S made and authorised the payments. Mr S 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 crypto. I don’t dispute Mr S was scammed and he wasn’t making payments for the reason he thought he was, but I remain satisfied the transactions were authorised.

It’s also accepted that HSBC had an obligation to follow Mr S’s instructions. So, in the first instance, Mr S is presumed liable for his loss. But there are other factors that must be considered.

I've considered whether HSBC should have done more to prevent Mr S from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

I think HSBC should be liable for payments 1 onwards. I say this because payment 1 was larger than the payments that Mr S usually made and was to a new international payee. In the circumstances I think payment 1 was unusual based on Mr S' prior account usage – such that it should've prompted HSBC to intervene and check with Mr S that the payment was not linked to fraud or scams.

So I think HSBC ought to have carried out further checks on payment 1 and contacted Mr S, before processing this transaction.

When intervening, I would expect HSBC to have asked Mr S who the payment was for, what it was for, and for the surrounding context of the payment - it could, for example, have asked how he had been contacted, whether he'd parted with personal details in order to open a trading account, whether he was being helped by any third parties e.g. a broker, and how he had come across the investment.

I have no reason to believe Mr S wouldn't have been open with HSBC, and I think he would have taken its intervention seriously. So, I think HSBC would have quickly learned from its conversation with Mr S the basic background to the payment instruction – that he had been approached by a company out of the blue who said that it was going to trade on his behalf

I think HSBC would have been concerned by what the conversation would most likely have revealed and so warned Mr S, explaining the typical characteristics of scams like this. Had it done so, I think Mr S would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if HSBC had intervened effectively.

It therefore follows I think Mr S would not have gone ahead with payment 1 or the payments afterwards.

I've considered carefully whether Mr S should hold some responsibility for his loss by way of contributory negligence. From Mr S's bank statements and the questionnaire he filled in as part of the scam, it is clear that Mr S was a relatively experienced investor. Yet I can't see that he did any research into B prior to investing I say this because I can find very little about B online, even when using an internet archive tool. I also can see that B had promised Mr S an 8% return per month on the funds that he invested. This level of return is considerably too good to be true and therefore I don't think anyone could reasonably have thought that this was a legitimate company to deal with. Finally, I can see that in order to persuade Mr S to invest more, it made him aware of an opportunity to invest in a company that was about to be subject to a hostile takeover and he was guaranteed a return of around £99,000 for an investment of around £50,000. This is not only unrealistic it is indicative of insider trading which Mr S should really have been aware of given his previous investments.

So overall and having considered everything I think that Mr S contributed to his own loss and therefore I feel that it would be appropriate to reduce the amount of compensation due to Mr S by 50%.

I have thought about whether HSBC should reimburse Mr S under the Contingent Reimbursement Model (“CRM”). But that does not apply to funds sent to an international account. I also don’t think that there was any other way for HSBC to have recovered the funds sent.”

HSBC agreed with my provisional decision. Mr S raised some additional points which were in summary that the amount of his investment experience outlined in the questionnaire he filled in for the scammer was overstated on the scammers own advice. That his actual experience was limited to 6 months part time Forex trading, some premium bonds, 1 share holding and investing in a US index funds in a stocks and shares ISA. And that had he actually been an experienced investor he would have realised that the returns offered were too good to be true.

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 note Mr S’s additional points and I accept that he may have overstated his investment experience when filling in the Know Your Customer (KYC) questionnaire that was part of the scam.

That said, even with the limited experienced that Mr S has outlined I think that he should have been aware that 8% a month is considerably better than anything that was legitimately available at the time. Also, the guaranteed return of £99,000 for a £50,000 investment based on advanced knowledge of the “*hostile takeover*” should also have raised questions about the legitimacy of the scammer.

So overall for the reasons set out above and in my provisional decision I think that a 50% deduction for contributory negligence is fair.

Putting things right

HSBC UK Bank Plc should

- Refund 50% of transaction 1 onwards.
- Add 8% simple interest annually on those sums from the date they were paid to the date of settlement, less any tax lawfully deductible.

My final decision

I uphold this complaint in part and HSBC UK Bank Plc should pay the redress outlined above to put matters right.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 29 August 2024.

Charlie Newton
Ombudsman