

The complaint

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

What happened

What Mr F says:

Mr F was looking to make investments and in February 2017, he found out about an investment company (which I will call 'A') through Facebook. He made an enquiry and then got many calls from a representative of A. Mr F carried out a few small trades – he was told A invested in well known, large global companies, as well as currencies and commodities. Mr F says he did some research and A looked legitimate at the time. He says he made some small investments to start with.

He carried on investing more money and on 14 March 2017, made a payment from his HSBC account for £50,000 to a payment services company (which I will call 'B'):

Date	Payment	Amount
14 March 2017	Phone payment in USD to payment services provider (B)	£50,000
Total		£50,000

Mr F made investments from his other bank accounts and using credit cards as well - and so invested a total of £117,050.

Mr F was told his returns would be attractive. He agreed to download screen sharing software and he was shown how his investments were apparently performing – at one stage, he said the screens showed his investment was worth USD300,000, so he was encouraged to invest further.

Mr F then asked to withdraw some money and the account manager said he couldn't as he would 'lose his job'. Eventually, he was offered compensation of USD30,000 by A – as Mr F threatened legal action. But nothing was received, either by way of compensation or withdrawal of money. At that stage (July 2017), Mr F realised the investment screens were fake, and spoke to HSBC to report that he had been scammed. HSBC then tried to get the money back, but without any success.

Mr F says HSBC should've done more to protect him. The payment of £50,000 was unusual for him and should've been stopped by HSBC. HSBC should've known it was a scam and was set up to defraud customers. He complained to HSBC in November 2022.

Mr F told us he has been able to get back the rest of the money he sent - through using chargeback claims.

What HSBC said:

In November 2022, HSBC said the payments were before the Contingent Reimbursement Model (CRM) code was launched in May 2019. So it didn't apply. HSBC tried to get the money back from recipient bank in July 2017, but without any success. They suggested Mr F contact the beneficiary or seek legal advice.

Our investigation so far:

Mr F brought his complaint to us. Our investigator said she was content that a scam had taken place. The payment of £50,000 was unusual and HSBC should've intervened and asked Mr F about it. There wasn't any indication that Mr F had been coached to lie or was provided with a cover story. So - had they done so, it was likely that the scam would've unravelled and the transfer not made.

But she said that Mr F should be responsible for 50% of his losses:

- He found the investment via social media, which was a known way by which scammers contact customers and operate scams.
- She wasn't persuaded he had done enough research. And he should've taken financial advice and looked at the Financial Conduct Authority's (FCA) website. The only research he had done was by using Facebook.
- He agreed for the scammers to use a screen sharing application to show him how to trade. No legitimate investment company would've done this, and it should've caused Mr F to be suspicious.

Our investigator said HSBC should refund £25,000, plus interest at 8% per annum simple.

In response to our investigator's view, Mr F asked what could be done for him to obtain a full refund.

HSBC didn't agree with our investigator. They said the payment in March 2017 pre-dated the significant guidance for banks about the checking of payments – specifically the BSI PAS Industry Code launched in October 2017. Therefore their duties to check such payments were less than they were later. HSBC also said the payments were made to a legitimate payments firm (B), so they wouldn't have had cause for concern in any case.

So – HSBC said Mr F should be responsible for 100% of his losses. Our investigator didn't change her opinion, and so HSBC asked that an ombudsman look at Mr F's complaint.

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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 F 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 F 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 F 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 another UK beneficiary– and in this case, the payments were made to an overseas account.

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The first consideration here is: if the payment was of a sufficient size and was out of character with how Mr F normally used his account – then we would expect HSBC to have intervened. I looked at Mr F's account from October 2016 to March 2017 (the only statements available) and it's fair to say that the payment was unusual compared to the way in which he normally used his account. I could see a small number of fairly high value payments – all were to accounts in the UK:

November 2016: £6,200
December 2016: £3,733
January 2017: £10,000
February 2017: £3,663

But here - the payment was for a much higher amount - £50,000, in currency, to an overseas account; and to a new payee – all of which means this was an unusual payment for Mr F to make.

HSBC have argued that a previous ombudsman decision said that the checks HSBC had to make at the time were less than when new guidance came into force in October 2017 – and I agree that broadly, that was the case. But – here, at the time the payment was made, HSBC was still required to conduct its “...*business with due skill, care and diligence*” (PRIN 2.1.1 - FCA Principles for Businesses: Principle 2) and to “*pay due regard to the interests of its customers and treat them fairly*” (PRIN 2.1.1 - FCA Principles for Businesses - Principle 6).

In other words, HSBC did, even before more specific guidance about payment scams came into effect, have a general duty to protect its customers.

And – each complaint we look at is decided upon in its own circumstances and on its own merits.

It's also important here to note the call between Mr F and HSBC when he made the payment – on 14 March 2017. We hadn't heard this call before and I asked for it and listened to it. On the call, HSBC took Mr F's instructions and completed ID checks. But – I (and I presume HSBC's call handler) could clearly hear that Mr F had the scammer on another phone while he spoke to HSBC. The scammer could also hear what HSBC was saying. On the call:

- Mr F first asked to make a payment of £10,000, but while speaking to the scammer, this increased to £50,000 – as HSBC advised he could send up to £50,000 in a day.
- The scammer told Mr F to make the payment in USD – as Mr F was unsure whether the payment was to be in GBP or USD.
- The scammer told Mr F what the account beneficiary details were, and the SWIFT code to use. Mr F then told this to HSBC.
- Mr F said to the scammer – “59,000 dollars, is that OK (and named the scammer)”
- Mr F said to the scammer “*it will be there tomorrow*”.
- Mr F asked the scammer to take down HSBC's reference number for the payment.

Therefore – I'm persuaded that given this, HSBC should've been alerted to what was going on and questioned Mr F about it.

HSBC was the expert in such matters and if they'd intervened, and spoken to Mr F about what was happening – and given that HSBC must have heard the scammer was coaching Mr F as he made the payment - we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where is the money going to from your crypto wallet – to 'bitcoin'?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?

- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

HSBC would've found out that Mr F had been contacted as a result of a Facebook contact; that he had done little research and had no experience of investing in bitcoin. And advised Mr F about the risks he was taking – but they didn't.

So – I consider HSBC is liable to refund the amount of the payment in the first instance.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Mr F could've done more to protect himself and whether he should therefore reasonably share some of his losses. And I think he should. I say that as:

- He made the contact using Facebook, which was a known way for scammers to operate.
- He relied on Facebook for his research – he didn't take any independent advice from a trusted friend or investment adviser.
- If he had looked at the FCA's website he would've seen that the investment company A wasn't listed (the FCA later published a warning about it, in October 2017 – after the event).
- He agreed that the scammers could use a screensharing application – it's not clear whether this enabled the scammers to move money from his account with B to the scam website A. But in any case, it's never a wise thing to allow a third party to have access to your computer.
- I didn't see any evidence of a contract, terms and conditions etc – and all business was done on email.
- He was told where to send the money to on a phone call with the scammers – while on the call with HSBC.

Therefore, I think it is reasonable that Mr F shares 50% of his losses with HSBC, and HSBC should therefore refund £25,000.

Recovery: I also need to consider whether HSBC did all that it ought to have done when Mr F reported that the payments were fraudulent. 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.

I can see HSBC contacted the bank in July 2017. HSBC then contacted the beneficiary bank, but there was nothing that the overseas bank could do. Unfortunately, it's the case that where an overseas bank is involved, the chances of recovery are lower than for a UK bank. I also noted that Mr F reported the scam to HSBC four months after the payment, and by then – the chances of any recovery were limited.

So, I'm satisfied that HSBC did what they could to get the money back.

My final decision

I uphold this complaint. HSBC UK Bank Plc must:

- Refund £25,000 to Mr F, plus interest on that amount at a rate of 8% per annum simple from the date of the payment to the date of settlement.

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

Martin Lord
Ombudsman