

The complaint

Mr V complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost as a result.

What happened

The details of what happened are well known to both parties, so I won't repeat them here.

In summary, Mr V was introduced to a social media platform by his granddaughter, and later re-visited the site by himself. He became interested in an investment opportunity he saw and began speaking with someone about it.

Unfortunately, this individual was a scammer, and persuaded Mr V to part with a large sum of money in order to 'invest' in cryptocurrency.

Mr V made the following payments as part of the scam.

Date	Payee	Payment type	Amount
21/06/2023	Revolut	Transfer	£10,000
26/06/2023	Zen	Transfer	£20
27/06/2023	Zen	Transfer	£1,000
27/06/2023	Zen	Transfer	£7,500
28/06/2023	Zen	Card payment	£20.50
05/07/2023	Zen	Transfer	£5,000
06/07/2023	Zen	Transfer	£5,000
11/07/2023	Zen	Transfer	£5,000
13/07/2023	Zen	Transfer	£5,000
14/07/2023	Zen	Transfer	£5,000
15/07/2023	Zen	Transfer	£5,000
17/07/2023	Zen	Transfer	£5,000
18/07/2023	Zen	Transfer	£5,000
19/07/2023	Zen	Transfer	£5,000
20/07/2023	Zen	Transfer	£25,000
21/07/2023	Zen	Transfer	£15,000
26/07/2023	Zen	Transfer	£7,400
		Total	£110,940.50

Mr V complained to HSBC, but it didn't uphold his complaint. Unhappy he brought his complaint to this Service.

Our Investigator looked into things but didn't think that the complaint should be upheld. Mr V asked for an ombudsman to consider his complaint, so it has been passed to me to make a final decision.

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've decided not to uphold this complaint, for broadly the same reasons as our investigator. I know this will be disappointing for Mr V, so I'll explain why.

It isn't in dispute here that Mr V has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr V authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, HSBC should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr V when he authorised payments from his account or whether it could and should have done more before processing the payments.

When doing so, I have not only taken into account the dealings Mr V had with HSBC, but also the interactions he had with two other Payment Service Providers – Nationwide and Revolut, both of which have provided information to this Service as they were both part of the payment journey of Mr V's money during the scam.

Having considered the payments Mr V was making, I do think that HSBC should have intervened from the first payment Mr V was making – the account had only just opened, and a large amount of money had just come into the account before being transferred out to Revolut. So, I think HSBC should have got in touch with him to check that all was well at this point.

However, HSBC did intervene when Mr V was making a payment for £7,500, and on several other payments Mr V subsequently made, and has provided the calls for me to listen to. HSBC questioned Mr V about what he was doing and why – but Mr V wasn't honest about what he was doing or the true purpose of the payments. I do consider that HSBC could have asked more questions than it did to try and uncover a potential scam – but in order for me to uphold this complaint, I would have to find that further questioning from HSBC would have gone on to prevent the loss here – and I don't think that that either an earlier intervention or further questioning would have had an impact on Mr V's determination to make the payments, despite HSBC discussing the potential for him being scammed.

This is because prior to making the payments from his HSBC account, Mr V attempted to make payments from his account with Nationwide which it prevented and asked him to explain what the payments were for. Mr V was unable to satisfy Nationwide about the reasons he wanted to make the payments – so it wouldn't allow him to complete the transactions. Mr V chose to then close his account with Nationwide (although he told us he was in the process of account switching) and move his money to HSBC.

I have also considered the actions Mr V took when the money that left HSBC was subsequently moved to his Revolut, and then on to the scammer. Revolut has provided the messages that it exchanged with Mr V when he made these payments. Again, Mr V wasn't honest about what he was doing – even though Revolut asked him specific questions regarding the purpose of the payment, and gave common signs of a scam including;

- The involvement of any third party,
- If he had made contact with anyone through social media, or found an investment through social media
- If he had control over the crypto wallet he was transferring to
- If he had been able to successfully withdraw funds previously
- If he was under pressure to not miss out on an 'opportunity'
- The prevalence of fake platforms showing investment performance
- If he had been promised returns that seemed too good to be true
- If he had been encouraged to invest by someone he had met online recently
- If he had given access to his devices, or downloaded screen sharing software such as Anydesk

But Mr V didn't divulge any of the above to Revolut, even though all of the above was applicable in Mr V's circumstances.

So, taking all of this into account, I consider that Mr V was so taken in by the scammer, there was little that HSBC could have done to prevent what happened here.

I know that Mr V has shared some information about his personal circumstances, including his poor health and money concerns – and that he considers that his medication could have

affected his thinking. But while I am sorry to hear that Mr V has been unwell, and was keen to improve his financial circumstances, I don't consider that this impaired his decision-making skills or made him vulnerable. Mr V made the transactions over a period of several weeks and was actively involved in making his decisions and was able to answer questions from all the banks involved in the payment journey. He was also able to do his own research towards the end of the scam that revealed he was being lied to. So I think he could have paused for time to reflect or seek advice during this time.

I am very sorry for the situation Mr V now finds himself in, he has lost a huge amount of money to a cruel and manipulative scam. I know that he is devastated by what has happened. But this is the fault of the scammers themselves, not HSBC, and I can't ask HSBC to refund him the payments when I don't think that it could have prevented the loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 30 May 2024.

Claire Pugh
Ombudsman