

The complaint

Mr R is seeking to recover approximately £36,000 from HSBC UK Bank Plc ('HSBC') which he lost from his account as a result of a scam.

What happened

I issued a provisional decision in December 2023 to explain why I thought Mr R's complaint should be upheld in part. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

"The details of this case have been clearly set out by our investigator when they wrote to both parties recommending that Mr R's complaint be partially upheld. As such, the facts are well-known to all involved, so I don't need to repeat them at length here. But in summary, between January and February 2019 Mr R made a series of five payments totalling £36,000 to what he believed to be a legitimate cryptocurrency investment. Unfortunately, it later transpired that he had fallen victim to a scam.

Mr R explained he was looking on a local business advertisement website when he saw an advert for a cryptocurrency investment. He had not invested in cryptocurrency before, but believed that the advert must have been verified by the legitimate local business website so he decided to look into it. He provided the 'company' with his contact details and was contacted by phone shortly thereafter.

Mr R was told that if he invested through the company, he could expect 12% returns, tax free. He was told he could access his money at any point. He said the person he spoke to was very persuasive and sounded professional and knowledgeable. Mr R said he completed some basic checks online into the business by looking at a review website and found no negative information. Mr R was not an experienced investor so said he did not know to check the company with the Financial Conduct Authority ('FCA') or on Companies House. The 'investment company' sent him a brochure which he thought looked professional. They asked him to complete an application. Persuaded to invest, Mr R sent the following

payments:

- *21/01/2019 - £1,000 to payee 1*
- *23/01/2019 - £10,000 to payee 1*
- *24/01/2019 - £10,000 to payee 1*
- *11/02/2019 - £10,000 to payee 2*
- *12/02/2019 - £5,000 to payee 3*

Mr R said he was shown a login to his alleged investment account where he could see the balance and some other information, but that he had to request a withdrawal through his contacts. He had no suspicions at first as the people he spoke to seemed knowledgeable and professional, and he did not attempt to make any withdrawals. He said he did not find it strange that he was asked to send money to more than one account, as he thinks he was told that they could have to 'chance the name' and the account for 'legislation reasons'.

Mr R said he discovered the scam when he attempted to call the 'investment company' on the details he had on the email they had sent him, but when he asked to speak to the named person he had been dealing with he was told there was no one by that name there. He reported what had happened to HSBC.

HSBC responded to his complaint in April 2019, but only referenced their findings about the £5,000 payment to payee 3. They declined to refund this as they did not feel they had done anything wrong. Mr R complained to HSBC again about the scam in 2021, and they wrote to him to say they would not be refunding any of the payments. They said the other payments were not covered by the Contingent Reimbursement Model code ('CRM code') and they were not obligated to refund them or do anything further to help Mr R.

Mr R then brought his complaint to our service in 2021. HSBC said that the payment dealt with in their first final response letter to Mr R in April 2019 could not be considered by our service as it was brought outside of the six month timeframe Mr R had to complain to our service about this. I have dealt with this matter in a separate jurisdiction decision in which I agreed with HSBC that we could not look into this payment as his complaint had been brought out of time – and so I will only be considering the merits of the first four payments here.

With regard to the merits of the complaint, one of our investigators looked into what happened, and recommended that the complaint be upheld and that HSBC refund the second payment onwards, along with 8% interest from the date of the payments until the date of the reimbursement. He suggested that HSBC ought to have flagged the second payment as unusual and out of character, and had it intervened it could have stopped Mr R from making the losses he did. HSBC did not agree that they ought to have done any more than they did.

As no agreement on the merits of this complaint were reached, the case has been passed to me to decide.

What I've provisionally 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 have reached a slightly different provisional decision than our investigator, I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. However, taking account of the law, regulatory 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 its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and building societies are generally more familiar with than the average customer; and*
- 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 or fraud.*

So I consider that as a matter of good practice, HSBC ought to have been on the lookout for unusual and out of character transactions. I've looked at the activity that took place on Mr R's account and having done so I do not think the first payment of £1,000 ought reasonably to have flagged as unusual or out of character for Mr R's account. In the preceding months there had been other payments for around this amount of higher, so it did not stand out against these, and there was nothing else about it that would have given cause for concern. HSBC did speak to Mr R about this payment as Mr R called in to ask them to 'confirm some bank details' and make a payment. He gave them a sort code and account number and told them it was a new payee, and for a company with 'crypto' in the company name. This was before confirmation of payee – so when he was asked if it matched up the advisor said he could say when it was either successful or sent back. The payment was then sent through. Arguably there was more HSBC could have done here – such as asking why Mr R wanted the payment details confirmed – but I do think that given the amount being sent, and the fact Mr R just sounded like he wanted to be sure he was sending it to the right account rather than having any concerns around the receiving account specifically, I think HSBC were not duty bound to further question Mr R here. And they would not have been able to answer any questions around the receiving account at this time anyway.

However, I do believe the second payment of £10,000 ought to have flagged as unusual and out of character – it was considerably higher than any other payments which had left Mr R's account within the time period, with the closest comparable push payment being for just £3,000. The £3,000 payment was also a payment between two of Mr R's accounts, unlike the £10,000 which went to a payee which had only been set up a couple of days earlier. There was a card payment a few months earlier of £50,000, but this was a different payment method and it went to an to a known and trusted organisation – a state owned savings bank. So, despite the £50,000 card payment I do think that the second payment which was for £10,000 ought to have flagged as unusual and out of character for the account. So I am persuaded here that HSBC should have been concerned about the possibility of fraud here and that HSBC should have asked some questions about the payment and warned Mr R of potential fraud and scams.

Due to the unusual nature of the payment the relevant law, regulations and good industry practice at the time required HSBC to question Mr R about the transaction and the reason for making them before it agreed to process the payment on his behalf. I am satisfied that this type of scam – an investment scam – was well known to HSBC at the time Mr R made the payments. But, based on the evidence I've seen, it does not appear that Mr R was asked questions about the second payment, or indeed the ones that followed, before they were executed.

In my judgement, HSBC could and should have done more here, particularly given that good industry practice from the time encouraged staff to ask questions about potentially fraudulent payments in order to test the purpose and legitimacy of the payments. Staff should have asked more probing questions such as what the payment was for, how he found the investment opportunity, what the investment was in, what the risk level was, what returns he was expecting, what paperwork they had received, whether he could show this to HSBC if required, whether he had done sufficient checks into the alleged investment firm – including looking at whether the firm was on the FCA register.

Mr R was not provided with a cover story to provide to bank staff and I am satisfied that had he been asked these questions he would have had no reason to lie to them. I think he would most likely have told them how he found the company – through an online advert. He would have told them that he had received a call back after entering his details in an online form on the advert. He was told that he could make 12% returns without paying any tax, and that he could withdraw the funds at any time without any risk. He would have told them that he had been promised a total credit refund if his trades were not successful within the first 90 days of activation of a guarantee provided by the investment company. He was sent documents but no contracts. The crypto investment said it was FCA regulated and even gave a fake

number – but he had not independently checked the company (beyond a quick search online for negative reviews) or looked on the FCA register.

When considering all of this, I think if HSBC had properly probed Mr R about the second payment, they could have prevented the payment and subsequent payments. Mr R was not an experienced investor and so had not understood what checks he needed to do. He thought the fact something had been advertised to him through his local business pages meant it would have been a checked and verified company. I think if he had explained this to HSBC the misunderstanding would have quickly been corrected – they could have told him that online adverts can be put up by scammers. Further to this, if they had instructed him to look up the company name or alleged registration on the FCA register it would have been clear that there was not a genuine cryptocurrency company registered with the FCA under that name or that registration number at that time. The scammers had said he could make quite high returns for the time too – up to 12% - though it does appear that these were not guaranteed as such. But it would have been unlikely to get returns this high at the time of these transactions without risk, tax implications or the funds being tied in for some length of time – so I think this would have likely added to the picture that Mr R was falling victim to a scam. The guarantee that he could have a full refund if his trades were not successful would likely have been another red flag which would have helped HSBC recognise this as a scam. And I think that if HSBC had educated Mr R on the risks of proceeding with this payment, and the way this particular type of scam works, they could have prevented the payment and subsequent payments from going ahead.

In other words, my current thinking is that but for HSBC's failure to probe the scam probably would not have succeeded from the second payment onwards and Mr R would not have gone on to make the payments at all – and so Mr R would not have sent the funds to the scammer.

Should Mr R bear some responsibility by way of contributory negligence?

As I have explained, I think on balance that HSBC could have prevented the loss here. But I also have to consider whether Mr R ought to bear any responsibility for the losses he has incurred too. This is because there is a general principle that consumers must take some responsibility for their decisions. In this instance, I do think that Mr R is partly responsible for his loss – and I am minded to say that I do think it would be fair and reasonable to make a deduction from the total award because of this.

I do not think any deduction from the payments that went to the first payee would be warranted here. Mr R was shown an apparent login to his account, he was given a very professional looking brochure and the scammers spent time persuading him they were a legitimate investment business. Mr R was an inexperienced investor, he believed he was dealing with professionals and so he trusted what he was being told. Whilst their offering did sound very good for the time – I think it was not so good that it put him on particular alert that he was at risk of fraud or financial harm. And I believe that Mr R had truly believed the company to have been vetted by a local business page in the first instance – which shows he was not alert to the fact that scammers used website adverts for illegitimate purposes. He did still double check for negative online reviews, but having not found anything of concern at the time he did not know that there were further checks he ought to have been doing.

However, when I asked Mr R why he thought he had to pay a new account for the fourth and then fifth payment (the latter of which is not under consideration here), he said they told him they had to 'change the name' and the account for 'legislation reasons'. This should have given Mr R cause for concern for two reasons. Firstly, it would be strange when having dealt with a company for three investment payments already that they then asked to send funds to a new account. And secondly, this does not sound like the explanation of a legitimate, registered and legally operating company. I cannot think of a reason why a legitimate company would say that their customer had to send funds to a new account for these reasons. So, I think that this should have been a red flag for Mr R, and that it should have

given him reason to question what he was being told. I think he ought reasonably to have spoken to a trusted person or organisation about the investment and how it unfolded at this point – particularly given how much money he had sent by this point and was planning to send.

Having taken into account all of the circumstances of this complaint, I think a fair and reasonable deduction would amount to 50% of the third payment that I considered eligible for refunding. I feel that this deduction takes into account that HSBC ought to have done more to be satisfied that Mr R was not at risk of financial harm from fraud, but at the same time, takes into account Mr R's own actions and the role they played in the success of the scam.

Recovery of funds

For completeness I have also considered whether the bank exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. Having reviewed what happened, I am minded to conclude that HSBC did exercise care and urgency in contacting the receiving bank and trying to retrieve any funds in line with industry best practice at the time the scam was reported – this led to some funds being returned by one of the receiving accounts, though unfortunately they were only able to get around £300 returned as the scammer had removed the rest of the funds from the accounts.

Putting things right

So, if nothing changes, I will be asking HSBC to refund the following with 8% simple interest from the date of the transaction, minus any money which has already been returned from the receiving accounts:

- *None of the £1,000 to payee 1*
- *All of the first £10,000 to payee 1*
- *All of the second £10,000 to payee 1*
- *50% of £10,000 to payee 2, in recognition of Mr R's contributory negligence*
- *None of the payment of £5,000 to payee 3, as I have considered this out of our jurisdiction.*

My provisional decision

My provisional decision is that I uphold this complaint in part – and unless anything changes I will be asking that HSBC pay the amounts detailed above."

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.

Mr R responded to agree to my provisional decision. HSBC did not agree with it. In summary, they said they did not feel it represented a fair and reasonable outcome because they felt it would be fair for liability to be split for all payments which were the object of the refund as they did not think Mr R acted with due caution throughout. In support of this, they said:

- He paid obscure payees in a high-risk area of investment which he did not appear to properly understand;
- My provisional decision had applied a subjective assessment of what Mr R believed – namely that the original website would have properly vetted the companies behind the adverts – when it should properly be an objective test of what a reasonable

person would have done.

- They do not doubt that Mr R would have believed he was paying for a legitimate reason – but this belief arose from the failure to check that his beliefs were accurate and he should have done so before the transactions in question;
- The business page stated on a well-known review website that they were not agents, but were an advertising medium which means they cannot vet all registered users. Mr R could have checked his assumption with the local business website before sending such large sums of money.
- Mr R realised he was the victim of a scam within about one week of the last payment, and it was striking he had managed to do so this quickly and shows he could have done further checks from the outset. He could have completed independent checks of the company's background before the payments. The fact he thought they were scammers so quickly after the payments shows he did not find the business listing and documentation very reliable.
- Mr R had paid £50,000 into the state-owned savings account just a few months before the scam, then cashed it out which he clearly did at least in part to fund the scam investment. This represented a radical change of course and so showed that he was attracted to the good to be true returns when making the scam payments. It showed that he was acting impulsively, and it was not the carefully thought out actions of a reasonable person.
- He was able to work out he had been scammed without negative information being listed online – he simply realised they were not certified company. He could have worked this out before he sent the funds.

They also felt that the application of 8% simple interest on the award represented a windfall and the relevant savings rate should apply to the transactions. They pointed to the fact he did not raise his complaint until over two years later, and the fact he had cashed out his savings held in the state owned savings account. They think the interest rate of that account, or the savings account rate he could have achieved with them would be a fairer interest award as it seems likely he would have left his funds in either of these locations if he had not fallen victim to the scam. They also felt it would be reasonable for this to apply from the October 2021 complaint date rather than the date of the loss.

I have considered HSBC's arguments and they have not changed my opinion on the fair and reasonable outcome of this complaint. I'll explain why.

The first matter I have to reconsider is whether HSBC's arguments change my opinion on whether Mr R should be considered contributorily negligent on all of the payments I suggested should be refunded in my provisional decision. HSBC have argued that as the test for contributory negligence is an objective one, my subjective assessment in this case does not represent a fair and reasonable outcome here. They do not appear to agree with any weight being put onto Mr R's assumption that the advert being on the site it was on meant it had been verified – and I do appreciate their point here. But alongside taking account of any relevant legal tests, I have considered this case within the fair and reasonable remit that our service operates within. And having done so, I have reached the same conclusion I did in my provisional decision. I appreciate with the benefit of hindsight it is easy to see that Mr R *could* have contacted the business listing website, or further researched it. But in the moment, between the fact he thought it was a verified company he was dealing with, and the sophisticated nature of the scam, I do not think Mr R acted with such negligence that deductions ought to be made for the first two payments I have asked to be refunded. Mr R was not an experienced investor. He was presented with someone who sounded knowledgeable and professional, who provided him with detailed literature and even a fake login so he could view his account. He was not aware of what checks he should have done, and whilst he was presented with returns that would have been unlikely in a

normal savings product at the time, they were not so excessive as to have seemed far too good to be true here. So my opinion on where contributory negligence should be applied remains the same as it did in my provisional decision.

The second matter I have to consider is whether the 8% simple interest rate is appropriate in this case. I appreciate that Mr R may not have been able to obtain a savings account with a similar rate of interest at the point these payments were made, but my interest award takes into account the overall impact of being deprived of those funds and that Mr R may have utilised the money in ways other than saving it. Whilst he took funds from the state owned savings account which he had only put in relatively recently, I cannot say for sure what Mr R would have done with the funds had HSBC been able to prevent him from falling victim to the scam, and so I think it is fair and reasonable to award 8% interest in this case.

I've also considered whether the interest should be awarded from the date of the loss, or from the date of the complaint. In this instance, because I find that HSBC ought to have prevented the loss from the second payment onwards, I think it is fair and reasonable to award interest from this point rather than the date of the complaint.

Putting things right

So as outlined in my provisional decision and quoted above, I ask HSBC to refund:

- None of the £1,000 to payee 1
- All of the first £10,000 to payee 1
- All of the second £10,000 to payee 1
- 50% of £10,000 to payee 2, in recognition of Mr R's contributory negligence
- None of the payment of £5,000 to payee 3, as I have considered this out of our jurisdiction.
- 8% simple interest on the refunded transactions from the date of the transaction to the date of the refund.

My final decision

My final decision is that I uphold this complaint in part – and I determine that HSBC must pay the amounts detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 April 2024.

Katherine Jones
Ombudsman