

The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) have failed to refund the money he lost as part of an investment scam.

Mr M has a representative but for ease of reading I will mainly just refer to Mr M.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr M found an advert for a crypto trader that I call B. B said that it could make Mr M money if he “traded” with it.

After this Mr M made a number of transfers and debit card payments between 18 August 2023 and 21 August 2023 to two accounts he had opened with an Electronic Money Institution. My understanding is that the funds were then transferred onto B.

The payments he made were as follows;

Transaction Number	Date	Payment Type	Amount
1	15 August 2023	Transfer	£20
2	18 August 2023	Transfer	£1,000
3	18 August 2023	Transfer	£3,000
4	21 August 2023	Transfer	£1,000
5	21 August 2023	Transfer	£5,000
6	21 August 2023	Transfer	£8,000 Returned
7	21 August 2023	Transfer	£5,000 Returned
8	21 August 2023	Transfer	£4,000 Returned
9	21 August 2023	Transfer	£1,000 Reversed
10	21 August 2023	Transfer	£1,000 Reversed
11	21 August 2023	Debit Card	£1,506

HSBC intervened after payment 5 and asked Mr M to contact them. Three calls took place on 21 August 2023 after payment 5 had gone through.

Mr M asked HSBC to refund the payments not returned as he believes HSBC should have done more to prevent him from being scammed. HSBC did not agree with this.

Mr M took out two loans in relation to this scam - one with HSBC which was investigated separately by us. The other was with a different provider and has been written off by that provider.

One of our investigators looked into this matter and they thought that HSBC could not have prevented the scam due to the answers that Mr M provided during his calls with it.

Mr M did not agree with this and therefore his complaint has been passed to me to issue a 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.

It isn't in dispute that Mr M authorised the disputed payments he made from his HSBC account. The payments were requested by him using his legitimate security credentials provided by HSBC, and the starting position is that HSBC ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether HSBC should have done more to prevent Mr M 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.

Payment 1 – 5

These payments were not sufficiently out of character to have prompted an intervention from HSBC. They were not large enough and the pattern was not sufficiently unusual to suggest that Mr M was being scammed. The payments were also being made to accounts in Mr M's own name. So I don't think that HSBC needed to intervene during these payments.

Payments 6 - 10

I think that HSBC should have intervened during payment 6 as it was larger in size and represented over £10,000 in a day being sent to a relatively new payee. It is not clear exactly the timings of the payments in relation to the phone calls with Mr M so it is unclear as to whether HSBC intervened at the correct point. That said though, it does not actually matter as these payments were all returned or reversed. So I don't think that HSBC need to do anything more in relation to these payments.

Payment 11

Payment 11 differs to the other payments as it was to a different EMI than the first 10 and was a debit card payment. So I don't think that HSBC needed to question that payment regardless of the other payments or stop this payment. It also was not reversed or returned.

This payment happened between call 2 and call 3 that Mr M had with HSBC on 21 August 2023. During the first two calls, Mr M actively misled HSBC as to the purpose of the payments he was making, these calls resulted in HSBC not discovering the scam. Call three though was a different matter, despite again Mr M actively misleading HSBC the member of staff did suspect that Mr M was being scammed and suspended Mr M's online banking and said that he had to attend a branch to unlock it.

If a call as thorough as call 3 had taken place with Mr M prior to payment 11 it would not have stopped the payment on its own as the call only resulted in online banking being suspended not debit card payments. That said it is possible that Mr M may not have attempted to make this payment.

Overall though I think that Mr M would have attempted to make payment 11 regardless of whether a call as thorough as call 3 took place before it. I say this as Mr M was still under the spell of the scammer during this call and was still actively misleading HSBC as to what he was doing. So I think he would have at least attempted this payment and as it was to a different EMI and via a different method of payment I don't think it would have been stopped.

But even if I thought that an earlier intervention would have stopped this payment it is my understanding that one of Mr M's loans that he took out to fund this scam was written off by the loan provider and this loan was for £5,000. So even if I thought HSBC had caused a loss of £1,506.30, which I don't think it did, this is offset by the £5,000 refund he has already received, albeit from a different financial institution.

In summary I don't think that HSBC should have intervened before payment 5 and as the payments made via transfer after this point were refunded, I don't think that HSBC needs to refund transaction 6 to 10. And even if HSBC could have prevented payment 11, which I don't think it could have done, the reduction in loss Mr M suffered by having the £5,000 loan written off by the other firm outweighs this.

I've also thought about whether HSBC could have done more to recover the funds after Mr M reported the fraud, but the transfers and debit card payment are not covered by the Contingent Reimbursement Model ("CRM"). I say this because the transfers were sent to accounts held in Mr M's own name and the CRM does not cover debit card payments at all.

Also, a chargeback claim would not have been successful either, as the debit card payments were made to an EMI and he got what he paid for. It was only when the funds that Mr M had purchased was transferred out of Mr M's EMI account and sent onto the scammer did the loss occur.

I have also thought about whether HSBC should have contacted the EMI providers which the funds went to. But as they were accounts in Mr M's own name, had any funds remained in the account, Mr M would have had access to these funds himself. So I don't think it needed to do this.

I appreciate this will likely come as a disappointment to Mr M, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that HSBC can fairly or reasonably be held liable for his loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 May 2024.

Charlie Newton
Ombudsman