

## **The complaint**

Mr H complains that HSBC UK Bank Plc (“HSBC”) won’t refund money he lost to an investment scam.

Mr H is being represented by solicitors in this complaint.

## **What happened**

The background to this complaint is well known to the parties and has been previously set out by the investigator. So, I won’t repeat it all again here. Instead, I’ll focus on giving my reasons for my decision.

The complaint concerns three transactions – two debit card payments and a faster payment – which Mr H made from his HSBC account in March 2023. These were made in connection with an investment opportunity with a company “C” which he came across during his research online when looking to increase his income. He left his contact details and received a phone call from a representative who said they were his account manager.

Mr H decided to open an account and made an initial deposit from a different bank account. The two debit card payments – £219.57 on 21 March and £1,104.97 on 23 March – were made to purchase the software required to trade on the platform. Mr H made the faster payment for £2,500 on 30 March as he was persuaded to upgrade to the ‘silver investment package’ so he would earn higher returns. I understand Mr H also made a further payment in April from a different bank account.

Mr H also received credits totalling around £1,680 into his HSBC account, so the loss being claimed is just over £2,100. When he couldn’t make subsequent withdrawals, and was locked out of his trading account, Mr H realised he’d fallen victim to a scam.

## **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 agree with the conclusions reached by the investigator for these reasons –

- From what Mr H has told us, and from my research into C, I’m satisfied it’s more likely than not that he fell victim to a scam. It seems he was dealing with a clone company. HSBC hasn’t disputed this point either. So, I’ve proceeded on that basis.
- In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case the 2017 Regulations) and the terms and conditions of the customer’s account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even though they authorised the payment.

- HSBC is a signatory to the Lending Standards Board Contingent Reimbursement Model Code ("CRM Code"), which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. So, I've first considered whether Mr H is due a refund under the CRM Code for the faster payment he made (debit card payments don't fall within the scope of the CRM Code).
- Considering it was a £2,500 payment to a third party, I don't think HSBC needed to provide Mr H with an Effective Warning, which is one of the bank's obligations under the CRM Code. I don't think the payment was indicative of a faster payment scam or so unusual or out of character such that I consider HSBC was required to do this. That said, I can see HSBC did provide a scam warning based on the payment purpose Mr H selected which he's told us he read before continuing ahead with the payment.
- Thinking next about Mr H's obligations under the CRM Code for eligibility for reimbursement, I don't consider that he ought to have had a reasonable basis for belief in what he was paying for here. I'll explain why.
- Mr H understood that he was dealing with C, but he was instructed to make a payment to a different payee, "P". His representative has said that he was told P, as well as merchant "S" he made the earlier debit card payments to, made up aspects of C. But I've not been able to find any links or connection between these companies. More specifically given the faster payment was in order to upgrade his membership level, I think most people in that scenario would question why they were being asked to pay the upgrade fee to a different company.
- Also, Mr H doesn't appear to have been concerned when the scammer told him he needed to select *other* as the payment purpose – when *investment* was listed as one of the options he could choose from – because choosing a different option would 'complicate the transfer'. I think this ought to have raised additional questions, given Mr H was effectively being advised to circumvent the bank's security checks.
- Having considered the above reasons in conjunction with each other, I don't find that HSBC acted unfairly in not reimbursing some or all of the amount Mr H sent to the scammer via faster payment.
- In addition to its responsibilities under the CRM code, when Mr H made the disputed payments, HSBC should fairly and reasonably 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). But given the size and nature of the payments, I don't think HSBC should reasonably have been expected to do any more to protect Mr H here.
- Thinking about recovery next, for the debit card payments which were used to purchase the scam software the only avenue would have been a chargeback. But in his complaint submission, Mr H has said he used the software, and it is what gave him confidence in the trading process (albeit it was simulated). In this scenario, he wouldn't be able to claim goods / services paid for were not received, which is likely the only chargeback reason code that could apply. Also, as the investigator has pointed out, time limits apply to when a chargeback can be raised. Given nearly six months had passed between Mr H's payments and when the matter was reported to HSBC, he would be outside the applicable chargeback time limits.

- For the faster payment, I can see HSBC contacted the beneficiary bank, but it was informed no funds remained to be recovered. This isn't surprising given the time that had passed between the payments and the scam notification.

In summary, while I accept Mr H was the victim of a scam, I don't consider HSBC should have intervened on any of the payments he made to this scam. And I don't consider it could have recovered his funds or that he's due a refund under the CRM Code.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 November 2024.

Gagandeep Singh  
**Ombudsman**