

The complaint

Mr D 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 it to refund him the money he has lost.

What happened

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

In summary, in around October 2022, Mr D came across a review online for "N" which said that an individual had invested with NTC and made a very good financial returns.

Mr D says that he undertook his own due diligence and read numerous articles and reviews which appeared to be very positive.

He made contact with NTC through its website, and was contacted by an individual, who was to be assigned his account manager. He signed a 'Deed of Deposit' and invested a small amount. He was in contact with his 'account manager' regularly, and he says that he was lured into making further payments between October 2022 and May 2023.

In May 2023, he was then contacted by another supposed member of staff who said that he had been upgraded to a 'Prestige' account. Mr D says that this new account manager manipulated a friendship with him and continued to encourage him to invest.

Eventually, Mr D began to express concerns that his investments were losing money, and it seemed that reckless decisions were being made, and he realised he had been scammed.

Mr D complained to HSBC, but it didn't uphold his complaint.

Mr D then brought his complaint to this Service. Our investigator looked into things, and didn't uphold the complaint either.

They also said that there was a discrepancy in the amount Mr D's representatives claimed Mr D had lost to the scam, as a lot of the transactions took place prior to when Mr D said the scam started.

Unhappy, Mr D asked for a final decision, so the complaint has been passed to me.

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 D, so I'll explain why.

I should start by saying that like our Investigator, I have concerns about the transactions Mr

D's representatives initially said were made as part of this scam. As Mr D says that initial contact with the scammer was made in October 2022 – and he signed a 'deed of deposit' with the scammer on 22 October 2022. Therefore, I will only be considering payments Mr D made after this date as part of my decision.

For clarity, Mr D had been purchasing crypto currency from his HSBC account since 15 August 2020.

Between 15 August 2020 and 13 October 2022, Mr D made payments totalling £402,356 to various crypto exchanges and received credits of £145,183.28.

From 22 October 2022 (when Mr D says the scam started) Mr D made payments of £131,375 and received credits of £28,936.27. This leaves Mr D with a loss of £102,438.73, which is the amount I am considering here.

It isn't in dispute here that Mr D 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 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 D authorised the payments in question – 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 the above into account, 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 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 from fraud.

This leads me to consider if HSBC acted fairly and reasonably in its dealings with Mr D when he authorised the payments from his account, and whether it could and should have done more before processing the payments.

Having considered Mr D's account activity, while I acknowledge that the payments were high and going to crypto, I don't think that they would have stuck out to HSBC as usual or suspicious for Mr D, and the way in which he normally operated his account. Businesses do have to reasonably protect customers from foreseeable harm – but Mr D had been making payments to the same crypto exchange since 2020 for significant amounts of money. So I don't think that it would have had suspicions that he was now making payments to a scammer.

I know that Mr D's representatives say that the amount and volume of the transactions significantly increased after the scam began – but I disagree. Mr D had made similar sized transactions, at the same kind of pace, for a number of years.

So, I don't think that HSBC would have been put on notice that something was amiss, and I don't think that it needed to get in touch with him to check that all was well.

It follows that I don't uphold this complaint.

I am very sorry for the situation Mr D now finds himself in – he has lost a significant amount of money as a result of the scam. But this is the fault of the scammers themselves, and I can't ask HSBC to refund him when I don't think that it has done anything wrong,

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 July 2024.

Claire Pugh
Ombudsman