

The complaint

Mr and Mrs R complain that HSBC UK Bank Plc (“HSBC”) won’t refund money they lost to an investment scam.

They are being represented by solicitors in this complaint.

Mr and Mrs R hold a joint account with HSBC. But as the disputed payments were made by Mr R, for ease I’ve mainly referred to him in this decision.

What happened

In late 2022, Mr R was introduced to an income-generating opportunity involving cryptocurrency by someone he met on a social media platform. He was told he wouldn’t be investing in cryptocurrency but participating in decentralised financial projects in encryption markets instead. By converting the capital sum into cryptocurrency and lending it, he’d earn a daily return.

Mr R was interested in the opportunity and, under the instructions of the individual, opened an account with the lending platform as well as a cryptocurrency exchange. He used his HSBC debit card to send funds to the cryptocurrency exchange for conversion into cryptocurrency, before sending it on to the platform. Mr R also sent money to the cryptocurrency exchange via faster payments. And he did a test withdrawal as well.

Things went awry a few days later when Mr R clicked on a button to register interest in a bonus scheme and discovered he needed to deposit a significant amount of cryptocurrency before he would be eligible for a bonus. And if he didn’t within a specific period, he’d have to pay a penalty and his credit score would be affected. Mr R attempted transactions from his HSBC account and became frustrated when some didn’t go through, and he saw ‘limit exceeded’ message on the crypto exchange’s website. He ended up speaking to HSBC a few times. He also took out a loan with the bank for just over £14,000 and used it to fund the transactions.

After sending the converted cryptocurrency to the platform, Mr R was informed by the platform’s ‘customer service department’ that he needed to redo the deposit due to an amount mismatch, which had also blocked the funds he’s paid in. He was unhappy with this outcome was concerned about other unexpected issues that could crop up if he tried again. He voiced his concerns with the customer service’s department as well as the individual he’d been dealing with, including whether he was being scammed.

Ultimately, Mr R made a further deposit after obtaining a loan from another lender. The individual he’d been liaising with also offered to make up the shortfall. But the second attempt at depositing funds was also blocked because of a wallet address mismatch.

The following transactions are relevant to this complaint –

	Transaction Date	Type	Amount
1	12 November 2022	Debit card	£1,906.37

2	15 November 2022	Faster payment	£50.00
	17 November 2022	Credit	£200.00 (credit)
3	22 November 2022	Debit card	£4,113.12
	30 November 2022	Debit card	£11,535.92 (unsuccessful attempt – ‘limit exceeded’) *
	1 December 2022	Loan from HSBC	£14,040.00 (credit)
4	2 December 2022	Debit card	£6,421.84
5	3 December 2022	Debit card	£11,535.92
	3 December 2022	Debit card	~ £15,000.00 (unsuccessful attempt – ‘limit exceeded’) *
	4 December 2022	Faster payment	£15,100.00 (transaction flagged and later declined) *
6	5 December 2022	Faster payment	£5,200.00 (transaction flagged and later released) *
7	11 December 2022	Debit card	£7,151.86
	14 December 2022	Loan from Z	£20,000 (credit)
8	21 December 2022	Faster payment	£12,500.00
9	23 December 2022	Faster payment	£12,500.00
10	23 December 2022	Debit card	£789.10
11	29 December 2022	Faster payment	£8,800.00
	12 January 2023	Credit	£239.59 (credit)
		Total payments	£70,968.21
		Total credits	£439.59
		Total loss	£70,528.62
<i>* Phone discussion between Mr R and HSBC happened</i>			

Our investigator didn't uphold the complaint as they thought Mr R was under the spell of the scam. They concluded that call recordings indicated he had been coached and was intent on making the payments regardless of the intervention (which they acknowledged could have been better).

Mr R's representative didn't agree with the investigator's findings, so the matter was passed to me for a decision. I issued a provisional decision a couple of weeks ago and said that I intended reaching a different outcome to the investigator.

I invited further comments from both parties. Both HSBC and Mr R said they accepted my provisional findings. So, what follows is my provisional decision made final.

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.

Under the Payment Services Regulations 2017 (PSR) and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Mr R made the payments using his security credentials, and so they are considered authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is

reasonably possible. If it fails to act on information which ought reasonably to alert it to potential fraud or financial crime, the bank might be liable for losses incurred by its customer as a result.

I've looked at the operation of Mr R's account in the year leading up to the disputed transactions. I don't consider the first three transactions (numbered in the table above) to be unusual such that I would expect HSBC to have asked Mr R further questions. He'd previously made transactions for similar amounts. Also, Mr R's bank statements show several cryptocurrency-related transactions in the year leading up to the disputed transactions. So, this type of payment wasn't unusual for the account activity.

But the transaction for over £11,500 on 30 November wasn't in keeping with the account activity. There was a significant jump in the amount – nearly three times the previous transaction – that Mr R had authorised. Given the substantial increase in the value and the fact that HSBC would have been able to tell that it was cryptocurrency-related, which both the Financial Conduct Authority (FCA) and Action Fraud had raised scam concerns about, I consider that the transaction ought to have triggered the bank's fraud detection systems and it should have made enquiries with Mr R to satisfy itself that all was above board before executing his authorised instruction.

Having listened to the recording of the call Mr R made to the bank at the time, it doesn't appear that HSBC was concerned about it. Although the call quality is poor, I can hear the agent confirm that the bank hadn't stopped the transaction in question; that it was 'pending' waiting to be collected by the merchant. This suggests to me that HSBC had executed Mr R's payment in line with his instructions, but that it's likely the 'exceeded limit' notification he'd seen on the merchant's website was down to a restriction at the merchant's end.

The call may have ended abruptly, and the potential risk paused when the transaction didn't go through in the end, but Mr R did authorise a further transaction (for approximately £6,400) two days later. Although it was for a lower amount, I still consider that HSBC should have made enquiries before executing that transaction given it should have identified a possible risk on the previous transaction but hadn't yet managed to speak to Mr R about it. We know it didn't, so an opportunity to intervene was missed here. It's also worth noting that Mr R had applied for and had been granted a loan by the bank before he authorised the transaction on 2 December.

The investigator thought that Mr R appeared frustrated during the calls on 30 November and on 4-5 December (which is a few days after the transactions I've referred to). I agree that Mr R sounded irritated. But I don't think that automatically means he wouldn't have engaged in a discussion with the bank had appropriate questions been asked. As I've mentioned, I've listened to the call that took place on 30 November – I don't think it's unreasonable he was getting frustrated given the difficulties he was experiencing trying to understand the agent when the call became jittery. By the time the calls of 4 and 5 December happened, Mr R had been unsuccessful in making transactions a few times which meant further calls needed to be made to the bank. But even during those calls, he answered the bank's questions. So, while frustrated, it's not the case that he wasn't engaging with HSBC.

The investigator didn't mention this in their view, but there was also a call on 3 December which was initiated by Mr R when he was unable to make a transaction that day. Although HSBC temporarily lifted the daily transaction limit at its end, and the debit card transaction still didn't go through, the bank didn't ask Mr R any questions about the payment itself. By that point, the bank ought to have noticed that Mr R was attempting to send proceeds from a loan he'd obtained for home improvements (as I understand it) to purchase cryptocurrency. Instead of making enquiries about the transaction and why he was using borrowed funds to purchase cryptocurrency, Mr R was advised that the 'limit exceeded' notification could have

been at the merchant's end and that he should try sending the money through a different channel such as a faster payment. When he tried making a faster payment the following day and it was declined – due to the transaction triggering the bank's systems and being subject to fraud checks – it was suggested to him that he should try making a debit card payment instead. Understandably Mr R became frustrated with the mixed messaging from the bank.

Even after declining the transaction on 4 December because it 'didn't pass the fraud review', the agent kept telling Mr R that the specific transaction had hit certain parameters and the best thing he could do was to try making the transaction again once the funds were returned. And, as I've mentioned above, to try using his card instead this time. This sort of response is unhelpful and doesn't serve the purpose of recognising and appreciating the fraud risk. HSBC could have explained why it was concerned that the transaction was risky. It could have shared examples of the typical scenarios involving cryptocurrency investment scams, and perhaps experiences of other customers who had fallen victim to such scams.

I should explain for wider context that we don't have all the calls from 4 December. The call HSBC has provided, which I've referenced above, appears to be the second call where the bank gave its outcome of the fraud checks. The investigator requested a copy of the initial call, but the bank said it couldn't locate it.

So, it might be that a scam warning was provided in the initial call that HSBC had with Mr R that day, where questions would have also been asked about the transaction. But having listened to the call on 5 December, where questions were asked and as such the call is likely representative of what would have been discussed the day before, no such tailored warning was provided. The agent asked Mr R about the payment purpose, and he said he was buying crypto for a long-term project. But there was no further probing.

Even if he had been sending money to a legitimate crypto exchange, it didn't follow that Mr R's money was safe, or that he wasn't at risk of financial harm due to fraud or a scam. By the time Mr R made the payments, I think HSBC had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

HSBC could have asked Mr R about what he intended to do with the funds once they had reached the cryptocurrency exchange. And how he'd come to know about the long-term project he'd mentioned. Had HSBC asked appropriate questions along those lines at the time – 2 December – and warned Mr R about cryptocurrency scams, I've no reason to doubt that he would have explained the true purpose of his payment. By that point, he hadn't invested a significant sum of money and hadn't had numerous frustrating phone calls with the bank. And looking at the chat correspondence between him and the scammer (the individual as well as the customer services agent), there's no suggestion that he'd been coached to lie or provide a cover story at that time. Coaching only appears to happen on or around 8 December when he was told not to mention investing in crypto but simply buying it to hold it. But that was nearly a week after the point at which I think HSBC ought to have questioned him.

So, on balance, I'm persuaded that Mr R would have looked further into the opportunity in general if HSBC had provided a tailored cryptocurrency warning and suggested some of the steps he could take to independently verify that what he was doing was legitimate. In other words, I think a meaningful intervention from HSBC at that time would likely have positively impacted Mr R's decision-making. And I think it's more likely than not that an intervention would have caused Mr R to stop from going ahead with that fourth transaction, thereby limiting his loss.

The fact that he'd also taken out a loan with the bank and was intending to use it to purchase cryptocurrency was an additional red flag. So, even if I were to accept the possibility that Mr R may not have been forthcoming about the true purpose of purchasing the cryptocurrency, I think HSBC ought to have still been concerned given he was using borrowed funds for what couldn't have been anything other than investment or trading.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. I've duly considered whether Mr R should bear some responsibility by way of contributory negligence. He doesn't appear to have carried out independent research into the mechanics of decentralised finance lending opportunity that he was offered. Or, ask for terms and conditions and a contract before parting with increased sums of money. Also, the returns he was advised – between £140 to £180 return a day on a £10,000 investment – equate to nearly 500% per annum. Moreover, he wasn't honest with HSBC or the other lender about the purpose for borrowing money. And for the later transactions, the chat correspondence shows he had concerns that he was being scammed. Yet he didn't carry out any independent due diligence before parting with even more money.

Having thought carefully about this, I do think that Mr R ought to bear some responsibility for his losses and that compensation should be reduced accordingly. I consider that it would be fair to reduce compensation payable by 50%.

Recovery of funds

I've thought about recovery in relation to the first three transactions. Mr R's payments went to a legitimate crypto exchange. For the debit card transactions, HSBC could have only raised a chargeback against the merchant he paid, not another firm. And given the merchant he paid had provided the service (conversion of money into cryptocurrency), a chargeback wouldn't have been successful. So, I don't think HSBC acted unfairly by not raising a chargeback. Additionally, time limits apply to when a chargeback can be raised, and it appears the bank wasn't notified of the matter within the appropriate time limits.

As for the faster payment, Mr R had already transferred the converted cryptocurrency to the fake lending platform. So, the funds couldn't have been recovered from the cryptocurrency exchange – the only party HSBC could have sent a funds recall request to.

Putting things right

To put things right for Mr and Mrs R under the circumstances of what happened here, HSBC UK Bank Plc needs to refund 50% of all the disputed transactions from and including the debit card transaction of £6,421.84 on 2 December 2022. It can make a deduction of £239.59 which Mr R recovered directly from the cryptocurrency exchange in January 2023.

I know Mr R took out loans to fund some of the payments being refunded. But I think awarding interest at the standard rate of 8% simple per year to the refund still results in fair compensation in this case. So, HSBC needs to add simple interest at 8% per year to the refunded amount, calculated from the date of each payment being refunded to the date of settlement.

My final decision

For the reasons given, my final decision is that I uphold this complaint in part. I require HSBC UK Bank Plc to put things right for Mr and Mrs R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 22 July 2024.

Gagandeep Singh
Ombudsman