DRN-4912770

Complaint

Mr C is unhappy that HSBC UK Bank Plc didn't reimburse him after he fell victim to a scam.

Background

In March 2024, Mr C encountered an online advertisement for an investment opportunity. The advertisement appeared to be endorsed by a well-known public figure and promoted the potential to earn substantial returns through cryptocurrency investments. Mr C provided his contact information in response to the advert.

Shortly afterward, he was contacted by an individual claiming to represent the investment company. This person proposed an investment strategy centred around cryptocurrency and guided Mr C through a *"know-your-customer"* (KYC) process, which made the arrangement appear legitimate. To facilitate trading on his behalf, the representative instructed Mr C to open an account with a third-party firm and to download remote access software.

Over the following weeks, Mr C made a series of payments as part of the scheme, beginning with smaller amounts before gradually increasing the value of his investments. The following payments were made:

No.	Date	Amount
1	7 March 2023	£2,000
2	10 March 2023	£100
3	13 March 2023	£402
4	20 March 2023	£9,990
5	22 March 2023	£25,000
6	23 March 2023	£25,000
7	24 March 2023	£25,000
8	25 March 2023	£25,000
9	26 March 2023	£25,000
10	27 March 2023	£25,000
11	28 March 2023	£25,000
12	29 March 2023	£25,000
13	6 April 2023	£25,000
14	7 April 2023	£25,000
15	8 April 2023	£25,000
16	10 April 2023	£20,000

These payments were made to Mr C's own account at a third-party firm. They were then transferred onwards to a cryptocurrency platform and, eventually, into the control of the fraudsters. Mr C did this in the belief that these cryptoassets would be managed on his behalf and earn a good return.

There were several interactions between Mr C and HSBC during the period in which these payments were made. On 29 March 2023, Mr C attempted to make a £35,000 payment over the phone. During the call, Mr C explained that he wanted to transfer the money to another account in his own name. He said he was transferring the money for his son, claiming it was for a car purchase. HSBC staff questioned the purpose and source of the payment, and Mr C explained he had obtained the details from the third-party firm's website. There was confusion about the date Mr C had moved into his current address – this had been inaccurately recorded on HSBC's systems. As a result, it appeared that he'd answered a security question incorrectly. The HSBC employee said this meant they couldn't process the payment as a single CHAPS transaction. It was suggested he split it into two smaller payments.

On 4 April, Mr C received an email purporting to be from a well-known cryptocurrency exchange, though this was later revealed to be fraudulent. The email informed Mr C that he needed to make an additional payment of £95,000 to confirm that he was not engaging in money laundering, as a prerequisite to accessing his investment returns.

On 6 April 2023, he called HSBC and asked to make a CHAPS payment of £70,000. I've pasted a relevant extract of the conversation he had with the call handler below:

> *Mr C: I just want to transfer this money to my other account.*
> *HSBC: Is that a savings account or anything?*
> *Mr C: No, it's just a normal account that I use as well as my HSBC account.*
> *HSBC: That's fine – it's just in case it was going to an investment or something, we need to ask …*
> *Mr C: No, I understand you have to ask these questions.*

The payment couldn't be processed over the phone because of a restriction that had been placed on his account on 29 March 2023. He was told he'd need to visit the branch instead. He did so the same day to make the payment. A member of branch staff recalled the following conversation:

> *"I went to speak to [Mr C] in the room; he informed me he wanted to make an EFT of £70,000 to his own account … he said it was for dental work, travelling, and to help his son, but that the funds had to be there today. I queried why it had to be there today, and the customer was vague in response."*

This requested payment wasn't processed because of a technical problem with Mr C's account with the other firm. Nonetheless, Mr C complied with the request made in the 4 April email from the fraudsters by making smaller payments. He made payments 13, 14, 15, and 16.

Shortly after, the scammers requested an additional £180,000. On 12 April 2023, Mr C visited an HSBC branch again. This time he attempted to withdraw £200,000 from his HSBC investment account. Branch staff were concerned and questioned him about the purpose of the payments. Mr C provided an alternative explanation, claiming the money was for dental treatment. HSBC remained concerned and so invoked the Banking Protocol – a process under which a police officer visits the branch to speak to the customer if the bank has serious concerns about fraud risk.

After realising he had fallen victim to a scam, Mr C complained to HSBC, arguing that the bank should have done more to protect him from the losses. HSBC, however, declined to refund him.

It argued that Mr C had previously made large transactions from his account without issue. For instance, he had made a £20,000 payment to an investment account in August 2022 and had made four transfers exceeding £20,000 in the year prior to the scam. HSBC said, therefore, that the scam payments were not particularly unusual or out of character. It also said that Mr C was a *"sophisticated investor"* with access to a dedicated wealth manager and he should've sought their advice (or the advice of a similar advisor) before taking such a big risk with his money.

It said that Mr C's decision to label some of the payments as *"friends and family"* rather than *"investment"* made it more challenging for them to detect the scam and provide him with an appropriate warning. Nonetheless, HSBC stated that it displayed investment scam warnings to Mr C on four occasions, including advice specific to cryptocurrency investments. HSBC believes that the fact that Mr C continued with the payments even after interacting with branch staff and police officers under the Banking Protocol indicated the depth of his belief in the investment. It argued that this determination on Mr C's part suggests he would have proceeded with the payments regardless of any interventions HSBC might have implemented earlier.

Mr C wasn't happy with the response from HSBC and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator thought that, even if HSBC had intervened earlier here, it was likely Mr C would've gone ahead with the payments anyway. He argued that there had been several interactions between Mr C and the bank and that he'd not been consistently open and honest with them. He also said that, when the bank initiated the Banking Protocol which involved Mr C speaking to a police officer, he misled the police officer too.

Mr C's representatives didn't agree. They were concerned about HSBC's decision to allow Mr C to make a £25,000 payment after he failed security checks for an attempted £35,000 payment. They also argued that Mr C stopped making payments only *after* HSBC invoked the Banking Protocol. It said that this suggests an earlier intervention would have prevented his subsequent losses. Mr C also contended that he never misled the police and that, in any event, their involvement came too late to make a difference. He clarified that he only mentioned his son as a reason for the payments at the end of the investment period and that was because his intention was to put his son in a good financial position. Mr C further claimed that he did not see any pop-up warnings related to cryptocurrency investments, and that he did not see *"crypto investment"* as an available payment option when making the transactions.

As Mr C disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm 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, that isn't the end of the story. Good industry practice required that HSBC be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to protect its customer from the risk of financial harm due to fraud. The extent of those steps should be proportionate to the risk presented by the payment.

We now know with the benefit of hindsight that Mr C was falling victim to a scam. The question I have to consider is whether HSBC should've recognised the scam risk given what it knew at the time. Mr C, via his representatives, has argued that HSBC should've intervened much sooner than it did. I'd agree with that conclusion. I think these payments were sufficiently out of character that there was cause for concern.

However, I can't ask HSBC to reimburse Mr C unless I can reasonably conclude that its error (i.e., the failure to intervene in connection with any of the payments) was the cause of his loss. I have to take into account the law on this point. That means I need to be able to affirmatively answer the following question – would the loss which Mr C has complained about have occurred *"but for"* the failings of HSBC? In other words, is there sufficiently strong evidence to show that it's more likely than not that, *"but for"* the failing on the part of HSBC, the relevant loss would not have occurred? If the loss would have occurred in any event, the conduct of HSBC is not a *"but for"* cause.

To reach a conclusion on this point, I need to consider what would have happened if HSBC had handled things differently. It ought to have contacted Mr C and asked him about the payment. It should also have given him general guidance about the prevalence and risk of fraud and scams. I recognise that I can't know with certainty what he would have done if this had happened. However, it's difficult for me to look at the way he interacted with HSBC throughout this period and not draw inferences as to how he would've responded if it had contacted him.

The evidence shows he did mislead the bank on 29 March and 6 April. He gave incorrect explanations as to why he was making the transfers when he was really intending to transfer the funds on from his account at the third-party to a cryptocurrency exchange. He also says that he wasn't given a cover story by the fraudsters. That means that the reasons he gave for needing to make the payments were fabricated by him alone. HSBC wouldn't have known what the end destination of the funds was because Mr C was paying an account in his own name. Furthermore, the explanations he gave as to why he was making the transfers weren't inherently suspicious – for example, he told the bank he wanted to help his son buy a car. It's difficult to see how an employee of the bank could've seen through that and identified that he was actually in the process of falling victim to an investment scam and I certainly don't think that the risk was so clear that it would've justified HSBC relying on the Banking Protocol.

Mr C's representatives have argued that Mr C would've responded differently to an earlier intervention, but I'm not persuaded that argument stands up. Mr C gave inaccurate information to the bank without any obvious need to do so. I can't see any reason why Mr C wouldn't have acted similarly in response to any queries from the bank if they'd been made earlier.

I don't say any of this to downplay or diminish the fact that Mr C has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and, while I agree that it should've handled things differently, I'm not persuaded that any failing on the bank's part was the cause of his losses here.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 December 2024.

James Kimmitt
Ombudsman