

The complaint

Mr H complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

In mid-2023, Mr H started to receive messages from someone he was in an online message group with, about an opportunity to invest in cryptocurrency. The messages said they were from a broker with a cryptocurrency investment company and that, if Mr H invested, they would be able to make a significant amount of money for him. Mr H then checked the company's website and found positive reviews of it online, so agreed to invest.

Mr H initially sent money from his HSBC account to an account he held with another bank, before sending that money on to a cryptocurrency exchange and using it to buy cryptocurrency he sent to the investment company. And he then later sent money directly from his HSBC account to the cryptocurrency exchange. I've set out the payments Mr H made from his HSBC account below:

Date	Details	Amount
5 May 2023	To account with other bank	£1,600
5 May 2023	To account with other bank	£200
5 May 2023	To account with other bank	£2,900
6 May 2023	To account with other bank	£950
6 May 2023	To account with other bank	£300
6 May 2023	To account with other bank	£2,000
6 May 2023	To account with other bank	£8,000
6 May 2023	To account with other bank	£1,000
6 May 2023	To cryptocurrency exchange	£1,000
6 May 2023	To cryptocurrency exchange	£1,000
6 May 2023	To cryptocurrency exchange	£620
6 May 2023	To cryptocurrency exchange	£5,000

Unfortunately, we now know the cryptocurrency investment company was a scam. The scam was uncovered after Mr H asked to withdraw the money the investment company told him he had made. He was initially encouraged not to withdraw, and then told he needed to pay more money in before he could withdraw his profits. And as Mr H never received the money he was told he had made, or his investment back, he reported the payments he had made to HSBC as a scam.

HSBC investigated but said the payments Mr H had made had all gone to accounts in his own name, either with the other bank or with the cryptocurrency exchange. So it didn't offer to refund the money he had lost. Mr H wasn't satisfied with HSBC's response, so referred a complaint to our service.

I sent Mr H and HSBC a provisional decision on 24 July 2024, setting out why I intended to uphold this complaint in part. An extract from the provisional decision is set out below:

“Banks are expected to make payments in line with their customers’ instructions. And Mr H accepts he made the payments here. So while I recognise he didn’t intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that HSBC was obliged to follow his instructions and make the payments. So Mr H isn’t automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think 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.*

And so I’ve also considered whether HSBC should have identified that Mr H was potentially at risk of financial harm from fraud as a result of any of these payments.

The first eight payments Mr H made here were all made to an account in his own name he held with another bank. And Mr H had made a number of payments to this other account from his HSBC account in the months before the scam, so the account details were known to HSBC as an established payment destination Mr H had used for some time seemingly without any problems. I also don’t think these first eight payments were so unusual in size or pattern as to overcome the reassurance the established payment destination will have given HSBC. So I think it’s reasonable that HSBC didn’t identify that Mr H could be at risk of financial harm as a result of these first eight payments.

The first three payments Mr H made to the cryptocurrency exchange were also not for particularly large amounts, or for amounts where I’d have expected HSBC to identify them as suspicious based on their size alone. They didn’t leave the balance of his account at particularly unusual levels. And they fluctuated in size, so I don’t think they formed a particularly suspicious pattern. So I think it’s reasonable HSBC didn’t identify that Mr H could be at risk of financial harm as a result of these three payments either.

And so I don’t think it was unreasonable that HSBC didn’t take any further steps or carry out any additional checks before allowing these payments to go through, and just followed Mr H’s instructions and made the payments.

But when Mr H made the fourth payment to the cryptocurrency exchange, of £5,000 on 6 May 2023, I think HSBC should have identified a risk. This payment was for a significantly larger amount than the previous payments to the cryptocurrency exchange. Around this time HSBC should have been aware that cryptocurrency related transactions carried an elevated risk of being related to fraud or a scam. And at this point Mr H had tried to make four payments to the cryptocurrency exchange on the same day, with the amounts seemingly

starting to increase significantly, which is a pattern of payments often seen when people are falling victim to a scam.

So I think HSBC should have identified a risk when Mr H tried to make this payment and intervened to carry out additional checks before allowing it to go through.

It's not for our service to dictate the checks HSBC should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the risk I think it should have identified, I think it would be reasonable to expect HSBC to have carried out some kind of human intervention and asked questions about the purpose of the payment and then relevant follow-up questions based on what Mr H told it.

HSBC has said it showed Mr H a written warning about possible scams before some of the payments he made. But I don't think this written warning was specific enough to Mr H's circumstances or went far enough into the details of why Mr H was making the payment to address the risk I think HSBC should have identified. So I still think HSBC should have carried out a human intervention and asked questions of Mr H.

I've not seen anything to suggest Mr H would have lied or tried to mislead HSBC if he was asked about the payment. And when HSBC did contact him about a later payment that didn't ultimately go through, Mr H did say it was for cryptocurrency trading. So, if asked, I think Mr H would likely have told HSBC this payment was for a cryptocurrency investment he was making. I think HSBC should then have asked further questions about how Mr H found out about the investment and what returns he'd been told he could make. And I think Mr H would then have told it he found out about the investment through someone contacting him online and that he'd been told he could double the money he invested.

As being contacted about investments online and being told you could make very high returns are common features of investment scams, I think HSBC should then have had significant concerns and warned Mr H that he was likely the victim of a scam.

Mr H does initially seem reluctant to answer questions on the later call with HSBC, and suggests he will make the payment from another account if it is cancelled. But HSBC then explains the checks are to help identify potential fraud and Mr H does then answer HSBC's questions when it asks again. So I don't think this is enough to conclude that Mr H would have made the payment regardless of the intervention HSBC carried out.

And as HSBC is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr H. If HSBC had explained that his circumstances matched common investment scams and given him some steps he could take to check whether it was legitimate, such as trying to withdraw all the money he had invested so far, I think the scam would have been uncovered and Mr H wouldn't have made any further payments towards it.

So if HSBC had done more to protect Mr H before allowing the fourth payment to the cryptocurrency exchange, as I think it should have, I don't think Mr H would have lost the money from this payment. And so I think it would be reasonable for HSBC to bear some responsibility for the loss Mr H suffered from this payment.

Should Mr H bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr H to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where he was given access to a trading platform which appeared to show profits he was making, I do think there were a

number of things about what was happening that should have caused him significant concern.

Mr H says he was initially contacted about this potential investment by someone he was in an online message group with. But this isn't how I would expect a legitimate investment company to contact potential clients. All of Mr H's communication with the investment company also appears to have been via text message and he doesn't appear to have been sent any documents or paperwork about his investment. But this isn't how I would expect a legitimate investment company to communicate with clients, particularly given the amount of money Mr H was ultimately investing. So I think this kind of communication should have caused Mr H some concern.

From what I've seen, Mr H doesn't appear to have been given a particular clear explanation or have had a particularly clear understanding of the trading the investment company was doing on his behalf or how the profit he was told he was making was being generated. And given the amount of money Mr H ultimately paid to the company, I think it would be reasonable to expect him to have had a clearer understanding of this or to have asked more questions about it.

Mr H also says he was told he could double any money he invested, with seemingly no risk of losing his money. And I think such high returns, particularly in such a short period of time and with little risk, should have caused him significant concern that what he was being told was too good to be true.

I sympathise with the position Mr H has found himself in. He has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused him significant concern. And I don't think he did enough, or that the seemingly genuine information he received from the company should have been enough, to overcome those concerns. So I think it would be fair for him to bear some responsibility for the loss he suffered.

Summary

As I think both Mr H and HSBC should bear some responsibility for the loss he suffered, I think it would be fair for HSBC to refund 50% of the money Mr H lost as a result of the fourth payment to the cryptocurrency exchange."

I said I'd consider anything further Mr H and HSBC sent in following the provisional 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.

Neither Mr H nor HSBC submitted any further evidence or arguments following the provisional decision, and both accepted the outcome. I therefore still think the conclusions I set out in the provisional decision are correct, and for the same reasons.

I still think both Mr H and HSBC should bear some responsibility for the loss he suffered, and that it would be fair for HSBC to refund 50% of the money Mr H lost as a result of the fourth payment to the cryptocurrency exchange.

My final decision

I uphold this complaint in part and require HSBC UK Bank Plc to:

- Refund Mr H 50% of the money he lost from the fourth payment he made to the cryptocurrency exchange as a result of this scam – totalling £2,500.
- Pay Mr H 8% simple interest on this refund, from the date of the payment until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 October 2024.

Alan Millward
Ombudsman