

The complaint

Mr and Mrs H complain that HSBC UK Bank Plc ('HSBC') won't refund the money they lost when they fell victim to a scam.

What happened

Mr H says that in November 2022 he was looking at a sports news website when he found an article about a company I'll refer to as P in this decision. Mr H didn't know at the time, but P was a scam investment company. P offered opportunities to invest in cryptocurrency.

After completing some research Mr H decided to invest with P. He paid a sign-up fee from an external bank account and received an email to say that his account had been verified. Mr H was able to sign into P's platform. Soon after, Mr H received a call from a representative of P who said he would be his account manager. The account manager agreed to trade for Mr H using funds from his bank account.

In mid-November Mr H was contacted by a different representative of P who said the initial account manager was ill and he would be taking over as Mr H's account manager. He also explained that he was a senior trader. This account manager communicated with Mr H regularly by phone, email, and messages to update him on the progress of his investment.

Mr H was advised to open an account with an electronic money institution ('EMI') to make payments more easily. He opened the account on 14 November 2022. Mr H initially made a low value transfer to a cryptocurrency exchange but mainly transferred funds from HSBC accounts to his newly opened EMI account.

I have set out in the table below the transactions Mr H made. All except the final payment, which was paid from Mr and Mrs H's joint account, were from Mr H's sole account. He has asked that all transactions be considered in this decision and Mrs H has agreed.

Transaction	Date	Amount	Payee
1	15/11/22	£10	Mr H's EMI account
2	16/11/22	£50	Cryptocurrency account
3	06/01/23	£10	Mr H's EMI account
4	13/01/23	£7,000	Mr H's EMI account
5	13/02/23	£25,000	Mr H's EMI account
6	13/02/23	£45,000	Mr H's EMI account
7	30/03/23	£6,500	Mr H's EMI account
8	27/04/23	£19,500	Mr H's EMI account
9	09/05/23	£25,000	Mr H's EMI account
10	10/05/23	£25,000	Mr H's EMI account
11	10/05/23	£25,000	Mr H's EMI account

Total		£178,070	
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On 13 February 2023 Mr H wished to transfer £70,000 to his EMI account but his daily transfer limit was £25,000. He made an online payment for £25,000 and called HSBC to ask if he could temporarily increase the limit. Mr H was told this wasn't possible, but he could make a transfer for the £45,000 balance on the telephone. When this was done Mr H was asked some questions about the transfer to his EMI account.

Very soon after each transfer from his HSBC account to his EMI account Mr H made transfers to a named individual on the advice of the scammer.

Mr H was able to see his profits increase. In April 2023 he enquired about withdrawing his funds. He was advised that he would need to pay Capital Gains Tax ('CGT') to release the funds. Mr H paid the tax on 27 April 2023. Then in May 2023 Mr H was advised that given the amount he was withdrawing he was required to pay an additional 25% CGT. After receiving an invoice, Mr H paid this additional amount in May 2023.

Mr H was told his funds were being processed but was then asked to pay further fees. He was concerned and completed some additional research. At this stage, Mr H saw negative reviews of P which stated it was a scam. He notified HSBC of a scam claim.

HSBC didn't agree to reimburse Mr H's losses. It said the transfers to Mr H's EMI account were 'Me to Me' transfers that aren't covered by the Contingent Reimbursement Model Code ('CRM Code'). HSBC also said that there was nothing in its call with Mr H on 13 February 2023 to suggest he might be falling victim to a scam.

Mr H was unhappy with HSBC's response and brought a complaint to this service. He said HSBC failed to protect him when he made high value transfers.

Our investigation so far

The investigator who considered Mr H's complaint recommended that it be upheld in part. She said that HSBC should have had concerns about payment five on 13 February 2023 and asked Mr H some questions about it. Had HSBC questioned Mr H effectively, the investigator thought that he would have explained why he chose the goods and services payment option and what he was actually doing. She said this because there was no evidence to suggest Mr H had been given a cover story.

The investigator said that Mr H should be refunded in full for payments 5,6,7 and 8 with HSBC and the EMI Mr H transferred funds to paying 50% each. Liability for the final three transactions should be split between HSBC, the EMI and Mr H.

HSBC didn't agree with the investigator's findings. In summary, it said:

- A significant amount of funds Mr H transferred were from external accounts, so the loss wasn't his.
- The £45,000 transfer on 13 February 2023 was made via telephone banking. During this call no identifiable scam risk was identified. Mr H was paying funds to another regulated payment services provider (his EMI account). There was nothing concerning about the answers Mr H provided (he wanted the money in his EMI account; he opened the account himself and had full access to it; he hadn't been told what payment reason to provide, how to answer HSBC's questions or to mislead his bank; he obtained the payment details via the EMI app; and hadn't been contacted about the payment). Given these responses there were no missed opportunities or evidence that Mr H may be the victim of a scam. If HSBC had asked Mr H questions about the previous transaction, the same answers would have been provided.
- HSBC believes Mr H contributed to his own loss and referred to a significant number of negative reviews prior to the payments being made.

- The EMI Mr H transferred funds to was in a much better position to determine whether something was amiss.

Mr H didn't agree that he should share responsibility for his loss at all.

The complaint was passed to me to decide. I intended to reach a different outcome to the investigator so issued a provisional decision on 5 March 2025. In the 'What I have provisionally decided – and why' section of my provisional decision I said:

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

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

As I have said above, all but the last transaction was from Mr H's sole account. So, if I make an award, I will specify which account the payment should be made to.

I've also noted that some funds were transferred from an external account to Mr H's HSBC account and then on to his EMI account. Mr H has explained that he was also investing on behalf of his parents, who have now been added as third parties to this complaint.

None of the transactions Mr H made are covered by the CRM Code. The CRM Code only applies to certain types of payment made to another person in pounds sterling, between accounts based in the U.K. In this case, Mr H wasn't transferring funds to another person but to an EMI account in his own name.

Aside from the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams.

In broad terms, the starting position at law is that a bank such as HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that HSBC should:

- *have been monitoring accounts and any payments made or received to counter various risks, including 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 firms 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, or provided additional warnings, before processing a payment; and*
- *have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers) and the different risks these can present to consumers,*

when deciding whether to intervene.

Taking into account what HSBC knew about the payments, I've thought about at what point, if any, it ought to have identified that Mr H might be at a heightened risk of fraud.

HSBC didn't identify any of the transfers Mr H made as suspicious. But when he asked to temporarily increase his daily payment limit as he wished to transfer a total of £70,000 to his EMI account in one day HSBC completed a fraud check. I consider it acted reasonably in doing so and that this is the point at which HSBC ought to have taken steps to satisfy itself Mr H wasn't at risk of financial harm.

I don't consider HSBC should have done anything more when Mr H made payment five as the investigator stated. When this payment was made, the payee wasn't a new payee, as Mr H had made transfers to the same account in November 2022 and January 2023. HSBC also knew from the confirmation of payee check that the account Mr H's funds were going to was in his name. These factors would have given a lot of reassurance to HSBC.

But when Mr H made payment six it was the second high value transfer in a day and brought the total transferred to £60,000. This was highly unusual given the usual operation of the account.

Whilst I appreciate HSBC asked some relevant questions (such as whether he opened the EMI account, and whether he had access to it) when Mr H sought to make a £45,000 payment on 13 February 2023, on balance, I'm not persuaded it went far enough. Mr H told HSBC that he wanted the funds in his EMI account. Towards the end of the call, the advisor said that they needed to put a reason for the payment and Mr H repeated that it was just to transfer funds to his EMI account. I'm not satisfied HSBC went far enough here, given the prevalence of multistage scams and the associated risks. Mr H wasn't pressed sufficiently to explain why he wanted to transfer funds, or what the funds would be used for once they reached his EMI account.

Mr H later followed the scammer's advice when transferring funds from his EMI account and said the payment was for goods and services. But there's no evidence that he had a cover story prepared and I think Mr H would have struggled to explain why he was making such substantial payments to his EMI account.

I acknowledge that in the call HSBC asked whether anyone had told Mr H which payment reason to give or to lie or mislead his bank. But I can't see that Mr H gave an incorrect payment reason or misled HSBC. And Mr H wasn't contacted unexpectedly, so he also answered this question correctly. All that Mr H said was that he wanted the money in his EMI account. In any event, no context was given by HSBC to help Mr H understand the importance of the questions, or of the consequences of proceeding.

In reaching my view that HSBC ought fairly and reasonably to have done more to protect Mr and Mrs H, I consider HSBC ought to have been mindful of the potential risk to them of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. The use of and risks to customers of multi-stage fraud were well known to banks by the time all the transactions I am considering were made.

Overall, I'm satisfied HSBC should fairly and reasonably have probed further and, if it had, it is more likely than not that the scam would have been exposed and Mr and Mrs H would not have lost any more money. In those circumstances I am satisfied it is fair to hold HSBC partly responsible for Mr and Mrs H's loss from transaction six onwards.

Should Mr H bear any responsibility for his losses from payment six onwards?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I recognise that Mr H says he had access to a platform and that this would have reassured him. But I consider that Mr H's actions fell below the standards expected of a reasonable person and so he should share liability for his loss from payment six.

Mr H says he looked at reviews of P on a well-known website before deciding to invest. I have looked at the same website and can see one positive review dated before Mr H started to invest (in August 2022). After that the reviews are negative, including reviews in September and October 2022, and in January 2023 before Mr H invested. And by 30 January 2023 the financial advisor Mr H was in contact with was specifically named in a negative review.

Mr H's representative said he was taken through a 'Know Your Customer' process as would be expected. But having looked at the messages, it's clear Mr H was simply asked to provide ID and proof of address to approve a transfer. So I'm not persuaded he was taken through a KYC process.

I'm also mindful that Mr H wasn't provided with terms of business or a contract of any kind as I'd expect of a genuine investment company. He was provided with emails that didn't include P's company details and which weren't particularly professional. There was also no reference to how P was regulated.

It's clear from the emails and messages Mr H exchanged with the representative of P that he was advised of huge and unrealistic rates of return. For example, on 22 December 2022 Mr H was told of 84% returns in the first quarter thanks to P's experts, on 11 January 2023 of a potential return of over 40%, and on 30 January 2023 P said most investors had not only doubled but almost trebled their accounts.

Although Mr H thought he was dealing with P, he paid the personal account of an individual. I think this was a clear red flag that something wasn't right, whether Mr H had previous investment experience or not. The explanation he was given, that this individual deals with UK transfers, wasn't satisfactory.

As time went on and Mr H was asked to make substantial payments to withdraw his funds, including a payment for tax before his profits were released, I consider Mr H ought reasonably to have been sceptical and taken additional steps to verify the legitimacy of what he was told.

I'm also mindful that Mr H expressed concerns but continued to make payments. In January 2023 he referred to the goalposts being moved and by 26 April he asked for reassurances that there weren't going to be any more costs. He was subsequently asked to pay a further amount.

Overall, I'm satisfied that Mr H should share responsibility for his loss.

Liability split and reimbursement

Liability from (and including) payment six should be split between HSBC, the EMI Mr H transferred his funds to, and Mr H. This means that each party is responsible for 33% of the loss.

Payments six to ten were made from Mr H's sole account so HSBC should reimburse this account. Payment eleven was made from a joint account with Mrs H. HSBC should pay its share of this payment to Mr and Mrs H's joint account.

Responses to my provisional decision

HSBC reserved its position in respect of the appropriate standards to be applied but agreed to my recommendation to bring the complaint to a close.

Mr and Mrs H said that HSBC should be responsible from payment five onwards, as this transaction was out of character with previous transactions, and that no deduction should be made for contributory negligence for the following reasons:

- Mr H looked up reviews of a company with a similar name to P and thought it was the same company as both related to investment.
- Mr H is not an investment expert, and the scam was sophisticated in nature.
- His expectation of an 84% return for the year was influenced by the significant increase in the value of cryptocurrency at that time and in the period before.
- It was a sophisticated 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, my decision is the same as my provisional decision, and for the same reasons.

I consider that HSBC ought reasonably to have recognised unusual behaviour on Mr and Mrs H's account when payment six was made. Whilst payment five was for a more substantial amount than previous transactions, it was to a payee that was created three months before and to which payments had already been made. I'm also mindful that HSBC could reasonably be reassured by the fact the funds were going to an account in Mr H's name. The next payment though was for a significant amount and was made soon after payment five. So I think HSBC ought to have taken additional steps before it was processed. I think that if HSBC had intervened appropriately, the scam would have been uncovered.

I turn now to the points Mr and Mrs H have raised about whether a deduction should be applied to take account of Mr H's actions. I don't intend to cause additional distress to Mr H, but I need to be fair to both parties.

I recognise that Mr H wasn't an experienced investor and certainly don't expect him to have the same knowledge as HSBC. But he paid the account of an individual when he thought he was dealing with a genuine investment company, which I think ought to have raised serious red flags. And I don't consider Mr H was given a satisfactory explanation for this. Added to this, Mr H didn't receive documentation as I would expect from a reputable company.

Other factors contribute to my conclusion that it is fair to apply a deduction in this case. The kind of returns offered by P's account manager were too good to be true and emails didn't include P's company details. As time went on, Mr H was asked to make substantial payments before funds could be withdrawn.

Mr H says he looked at reviews of a company with a similar name to P which was legitimate. I have looked at the reviews, which are mixed. The scam company Mr H thought he was dealing with had a one-word name that ended in an 's'. The legitimate company name included two words, and didn't end with an 's'. It was also a cryptocurrency exchange.

It is the combination of these factors that lead me to conclude that Mr and Mrs H should be held partly responsible for their loss.

Overall, I'm satisfied that HSBC ought reasonably to have intervened when payment six was made. Liability from that point should be split between HSBC, the EMI funds were transferred to and Mr H for payments six to ten, and HSBC, the EMI and Mr and Mrs H for payment eleven.

My final decision

For the reasons stated, I uphold this complaint and require HSBC UK Bank Plc to:

- Pay £40,333.33 to Mr H's sole account; and
- Pay £8,333.33 to Mr and Mrs H's sole account, and
- Pay interest on the above amounts at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it has taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 17 April 2025.

Jay Hadfield
Ombudsman