

## Complaint

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

## Background

In early 2022, Mr P fell victim to an investment scam. He'd been looking for investment opportunities online and found a website advertising the services of a broker. He registered his interest and, shortly afterwards, was contacted by someone who claimed to be a representative of that firm. Unfortunately, that person wasn't the employee of a genuine investment firm but a scammer.

He made payments from his HSBC account to an account in his own name provided by a third-party firm that I'll refer to as R. Mr P then transferred on his funds from that account to one controlled by the fraudsters. In total, he transferred just under £270,000 between 5 April and 4 May 2022. He did so in the belief that he was putting his money under the control of someone who would invest it on his behalf and generate returns.

Although the first payment connected to the scam took place on 5 April, there had been a number of failed attempts in the weeks before that. These resulted in several phone conversations between Mr P and employees of the bank as he attempted to make payments of £5,000 and £10,000. The contents of those calls are important to the outcome of the complaint. I've partially transcribed the parts that are particularly pertinent. The text has been edited for brevity, but it reflects the substance of those conversations. C refers to Mr P, and B refers to the HSBC employee he was speaking to at the time.

The first followed Mr P's attempt to make a £5,000 payment by debit card on 24 March 2022. Part of the conversation went as follows:

*C: I'm trying to do a transfer of £5,000. I've got £16,000 in my account ... I want you to transfer £5,000 across to, erm, a company that I'm purchasing some shares off.*

*B: What's the name of the company where you're purchasing the shares?*

*C: [Name of scam broker]*

*B: I can see there's a transaction of £5,000 for [crypto platform]?*

*C: That's correct.*

He spoke to HSBC again around 20 minutes later because the payment still hadn't been processed. He was given instructions regarding the steps he needed to take to ensure the payment was made. He spoke to HSBC again around 40 minutes later and was told that his payment was pending and that the merchant needed to claim it. If it didn't, it would be returned to Mr P's account. In that third call, he talked about spending around two hours on the phone trying to get the payment processed and that he'd found the bank employees he'd spoken with difficult to hear and understand.

On 25 March, HSBC called him to discuss one of the payments he'd asked it to make. The following conversation took place:

*C: Which one are you on about? The £10,000 one?*

*B: The transaction we are concerned about is for £10,000 and it is going to ... Stablecoin ... something?*

*C: That went out this morning and that's fine.*

*B: May I please know the purpose of the payment, if you don't mind?*

*C: The purpose of the payment was for investments.*

*B: Ok, no problem with that – may I please know, have you invested with them before or is this the first time?*

*C: This is the first time.*

*B: And may I know, how did you receive the account details from them?*

*C: Talking to them.*

*B: Over the phone, you're saying?*

*C: Over the phone, yes.*

*B: And how did you get to know about Stablecoin? Was it through advertisement or research?*

*C: Advertisement.*

*B: Ok, no problem ... and ... did you consider making a smaller transfer first before making this £10,000 payment?*

*C: I did, I transferred £500 and then, yesterday we tried to do a transfer of £5,000 and to be perfectly honest with you, I was absolutely disgusted with the amount of time and effort it took trying to get it through. I was talking to people I couldn't understand and sometimes I couldn't hear them. I have lost money overnight because I was unable to purchase. Now the £5,000 has been taken out of my account, it's not gone to theirs, it's in the cloud somewhere and needs to go back to my account now. It never went. It went out of my account but it's in limbo – it never went to them.*

*B: Ok, so did you check with them if there was any specific reason why they've not received it?*

*C: Because the bank refused! The bank refused it!*

*B: Just to be sure, did you receive any text message or emails recently that you thought was from HSBC or any other third party?*

*C: Sorry?*

*B: Just to be sure, did you receive any text message or emails recently that you thought was from HSBC or any other third party?*

*C: No.*

*B: Ok, just for future reference, please never click on any suspicious links that you receive. Even if you feel you have received any text message or any emails from HSBC, I would request that you validate this directly using your registered mobile application or your internet banking. But never click on any links to validate any message from anywhere please.*

*C: Right...*

*B: Thank you so much ... And just to be sure, have you received any third-party phone calls recently like Amazon, BT, TalkTalk, Microsoft, HMRC...*

*C: No.*

*B: ... asking you to transfer any funds*

*C: No.*

*B: Thank you so much – I would request you never believe on those phone calls because those are definitely fraudulent phone calls and I would also request would you please never believe on any phone calls you receive from any of the banks saying that your account has been compromised and now you have to transfer all your funds to any other account or something like that because no bank will ever ask you to do that.*

*C: Right....*

*B: Thank you – and may I ask, has anybody told you how to answer our questions or asked you to mislead us in anyway about the purpose of this payment?*

*C: No, no.*

*B: Ok, so you never believe on anyone asking you to do that either because nowadays there are a lot of fraud and scam scenarios and we are receiving cases where our customers have informed that they receive phone calls from the police and they were asking them to transfer funds because otherwise there was an arrest warrant or any kind of a charge against them ....*

*C: I don't understand, I don't understand what all this is about. All I want to do is purchase some shares from a company from my account which I've got money in, and I have had nothing but trouble doing this. What is the problem? If I want to transfer it from my bank account across to somewhere else, what is the problem?*

*B: No, no, there is no problem because there are a lot of fraud and scam scenarios regarding these investments nowadays and that is the reason ... we want you to be 200% sure before making any payment*

*C: Well, I'm sure. I'm an adult. I'm perfectly sure – you've stopped me being able to do a transfer last night and I've had to go round to a different way of paying it to get it through, right? Now that should not happen with my bank account. I have money in my account, and I should be able to do what I want with it.*

*B: No, absolutely true.*

*C: Three times last night, three times I had to phone the bank. I had to get numbers given to me, six-digit codes, none of them went through, you stopped the money going through on three occasions. I couldn't understand the person I was talking to. It's just not on, it's not good enough.*

*B: It [the £5,000 payment] was not able to leave your account, it says.*

*C: All I want is to be assured that that £5,000 that's floating around in the air somewhere goes back into my account.*

*B: Have you known this company for a long time?*

*C: No, I have not known it for a long time but it's something I'm quite happy to go ahead with, thank you.*

*B: I'm actually really concerned that this might be an investment scam so you should check where you are sending the money by having double checked everything with them once again because it's the first time ...*

*C: Ok, thank you*

*[call ends]*

Mr P spoke to HSBC again on 26 March about the attempted £10,000 payment. That call went as follows:

*C: It's to a company that's dealing with shares for me .... [name of broker].*

*B: But I see a different name over here? I can see that you've made a payment to Stable Coin.*

*C: That's right.*

*B: Who is this person to whom you're trying to pay this £10,000?*

*C: It's supposed to be through to the [the broker] through a Lucas.*

*B: But I can see a different name over here, as I mentioned ... Stable Coin? Now, what is that?*

*C: This whole thing started two days ago. I was trying to buy some shares and your bank has stopped my money going through. There's £5,000 in a cloud somewhere and then you stopped £10,000 thinking that it was fraud. Well, I'm not sure about it now. I just want it stopped, back into my account and no more money to go out to these people.*

*B: Ok, no problem – but Stable Coin is what? Is this an investing company? What exactly is it?*

*C: I don't know, I'm totally lost in this now. It was supposed to be buying Tesla shares.*

*B: Ok, did someone approach you about this? How did you get to know about this?*

*C: I went on the internet to look up for cryptocurrency ... [The broker] came up and when I was looking at the information, someone phoned me up.*

*B: Ok, are you sure it's a legitimate company where you are transferring?*

*C: I'm not sure of anything anymore, I just ... I want it stopped, the money returned back if it's possible. They can't take anything else from me again.*

*B: Ok, no problem ... I would like to give you some information. Whenever you try to do any investment through any other company, I would suggest you google the Financial Conduct Authority website to check the firm is listed under financial services. I request that you please be aware of cloned firms. Fraudsters will sometimes set up companies with names that are similar to legitimate firms. Fraudsters may [unclear] a unique opportunity for high-return investments. These people will tell you not to disclose any information to banks. This is an effort to ensure that we do not prevent the funds from reaching their account. So please, make sure when you're trying to invest anywhere, check the website is legitimate, check the reviews, check with the Financial Conduct Authority website – are they listed or not?*

*C: I've checked [the scam broker] and they say they've been open less than four months so that's a scary one as well. I won't be doing it again.*

*[the call handler asked about the payment purpose Mr P selected]*

*C: ... I was putting investment, and they said it put it as 'goods and ...' ... that one. Because you were buying a commodity or something.*

*[...]*

*My wife died last year and my daughter and they did everything on the phones... I've had some money from the sale of a house, and I thought I'd invest some and I've made a total cock-up of it. I can't work the phones properly at all. This is why it's taken so many days to get through.*

*B: Based on our conversation, I'm concerned that this may be an investment scam. You should check where you're sending the money by contacting them in person or using a number you trust. We recommend it is not on text or email ....*

*[The call handler goes on to confirm that the payment won't be made because C no longer consents to it]*

*C: Can you make sure this company no longer has access to my account?*

*B: Ok, did you ever give your bank details or bank credentials to them?*

*C: I think they were looking at my phone while I was doing things .... They helped me through the stages of doing it, so he was telling me 'press this in the top corner', 'press that in the bottom corner'. They also have my identification – my driver's licence and my bank statements.*

*B: You have to check that these people are legitimate or not.*

*C: I know, I know*

*B: If you're planning to do any investment, I would suggest you try to check and then try to make the payment but do not give your information to anyone because what happens is they will try to log in to your account, try to reset your telephone number, try to reset your credentials, try to change your password ..."*

On 5 April, Mr P spoke to HSBC again. He'd attempted to make a payment to his own account with a third-party business, R.

*B: You mentioned the reason for the transfer is to your [R] account to purchase shares?*

*C: Yes.*

*B: Ok, did you recently open your [R] account?*

*C: Yes.*

*B: Ok, also ... when making the payment, did you notice any fraud warnings?*

*C: No, no fraud warnings.*

On 7 April, Mr P spoke to HSBC after a £15,000 payment had been stopped. The call handler told him he'd need to visit the branch with valid identification to have the payment authorised. Mr P was unhappy with that and told the call handler:

*If I have to go to the branch with my ID on Monday and I'm not able to send this £15,000 across to my account that I want it to go to, I will be drawing my quarter of a million pounds out of the account, closing it down and talking to the ombudsman ... you have got no right to stop me sending this money*

According to Mr P's recollections, he visited the branch and showed an employee of the bank the trading platform he'd been given access to. He says he shared his concerns about some of the negative online reviews and that he was told that, as the company hadn't been trading very long, that might account for the fact that the reviews weren't reassuring. Mr P recognised that he must have fallen victim to a scam when he was pressured to borrow money so that he could continue investing. He notified HSBC who didn't agree to reimburse him. It said that, as he'd moved the funds from his HSBC account to another account in his own name, HSBC couldn't be held responsible for his losses. It recommended that he direct his complaint to R instead.

Mr P wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator noted that HSBC was expected to carry out fraud checks on out of character payments and it had done so. However, he didn't think its interventions had gone far enough and, as a result, it had missed several opportunities to prevent the scam.

He recognised that Mr P had sent the money to his own account with R and so his losses didn't occur immediately after these transfers took place. Nonetheless, he was persuaded that it was foreseeable to HSBC that these payments could be connected to an investment scam and that it was fair and reasonable for it to be expected to reimburse Mr P's losses.

The Investigator also considered whether Mr P could be considered partially responsible for his own losses by way of contributory negligence. He didn't think he'd acted unreasonably for the following reasons:

- Mr P built a rapport with the scammer over several weeks before beginning to invest significant sums.
- The platform Mr P had been given access to seemed to show that his deposits had been received and that he was earning returns on them.
- He hadn't been made a specific promise about the available returns – the scammer had told him that the returns would be influenced by current events.
- He received a small return back into his account which reassured him that the investment was legitimate.
- The Investigator also noted that Mr P had lost both his wife and daughter in the previous year and was suffering with severe mental ill health. As a result, he concluded Mr P was more vulnerable to the risk of a scam.

HSBC disagreed with the Investigator's view. Its response was lengthy, but I've summarised the key arguments below:

- In the earliest calls, C was attempting to pay a crypto-platform and said it was because he was working with the broker, W. His later payments were to a different payee (his own account with R). It wouldn't be immediately obvious that these payments were connected to the earlier potential scam, particularly given that Mr P didn't mention the broker in the later calls.
- From a risk assessment perspective, a customer making a payment to their own account with a third-party business isn't the same as a customer making a direct payment to a crypto platform. HSBC argues that R was much better placed to judge the risks here given that it knew the ultimate destination of Mr P's funds.
- Mr P's conduct suggested that he was strongly motivated to make these payments. At one point, he threatened to close his HSBC account and withdraw all of his funds. It would be disproportionate for it to have stopped him from doing so.
- It recognised and sympathised with Mr P's extremely difficult personal circumstances, but it wasn't persuaded that they had any impact on his decision making here.
- During the conversation on 26 March, Mr P told the call handler that "*I won't be doing that again*" and yet he did. Given that, it would be reasonable for him to bear some responsibility for his losses here.
- HSBC says it told Mr P to carry out checks before investing but it doesn't appear that he did so.
- It also reiterated its argument that it couldn't be considered responsible for his losses given that he made the payments to an account in his own name.
- The Investigator's argument that HSBC should be liable on the basis that a fraud loss was foreseeable demonstrates a misunderstanding of the principles of causation. There was no causal link between the actions of the bank and the loss because Mr P had paid his own account. His action in moving the funds on represented a break in the chain of causation.

Because HSBC disagreed with the Investigator's conclusion, the case was passed to me to consider.

## Findings

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

I issued a provisional decision on this complaint on 23 August 2024. I wrote:

*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 2017 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 payments that were out of character or unusual to the extent that they might have indicated a fraud risk.*

*In weighing up that risk, it should also have kept in mind the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the customer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an account with a firm like R as an intermediate step between a high street bank account and cryptocurrency wallet. On spotting a payment that has relevant risk indicators, I'd expect it to intervene in a manner proportionate to the risk identified.*

*The Investigator concluded that HSBC's concerns ought to have crystallised before the first payment. He considered that it should've been concerned during those earlier calls where Mr P's efforts to make payments were frustrated and no funds left his account. I agree with the Investigator's conclusion on that point. Unfortunately, those calls weren't as well handled as they ought to have been.*

*The first call related to Mr P's attempt to make a payment to a crypto platform. When asked questions about the payment, he told the employee of the bank that there was a broker that was advising him and that the purpose of the payment was to buy shares. I think this ought to have been cause for concern. The fact that he was putting funds onto a crypto platform and there was a broker assisting him was strongly indicative of Mr P having been drawn into an investment scam.*

*The second call has those features too. Mr P was attempting to make a payment to a crypto platform but explained that there was a company managing the investment for him. The call handler at the bank read him a warning that wasn't relevant to the circumstances of the scam and Mr P made it clear that he couldn't hear the adviser.*

*The third call also involved Mr P attempting to make a payment to a crypto platform, but opting instead to cancel the payment. He told the adviser that he was trying to buy shares in a well-known listed company. But the call handler had found that the payee was associated with cryptocurrency. Mr P also revealed that the broker had been using remote access software to view Mr P's device. It ought to have been clear that this could only be a scam. It's also worth noting that, during this call, Mr P revealed that his wife and daughter passed away the previous year and that he was dependent on their help with financial matters – and so I think HSBC was on notice of his potential vulnerability at that point.*

*In the second call, HSBC attempted to warn Mr P about fraud risk, but the warnings that were given to him were barely comprehensible and he quite clearly didn't understand them.*

*The third call was slightly more helpful in that the adviser referred to using the FCA website as a way of protecting himself from potential investment scams. However, the way it was explained to him left him none the wiser as to what steps he actually needed to take.*



*I've considered the fact that Mr P was making the payments to an account in his own name. HSBC has argued that this shows it couldn't have known that this was a payment relating to cryptocurrency and therefore taken appropriate steps to manage the associated risk. However, in my view, the fact that Mr P had been drawn into an investment scam ought to have been clear to the bank in one of those early phone calls that didn't result in any payments being made.*

### Causation

*Overall, I'm satisfied that there was an error on HSBC's part here. However, I can't ask it to reimburse Mr P unless I'm persuaded that the error was the cause of his losses. 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 damage or loss which Mr P has complained about have occurred “but for” the failings of the respondent? 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. I think it should've warned him in clear terms about the fraud risk that he was exposing himself to. He was clearly uncertain about what he was doing and so, if this had happened, I think he'd have little doubt that the person he was interacting with was a fraudster and so wouldn't have proceeded with making payments.*

*HSBC has said that Mr P was determined to make these payments and even talked about closing his HSBC account and moving his funds elsewhere. It's suggested that this indicates that he'd likely have pressed on with the investment regardless, even if that meant using a different bank to send the money. However, it's important to bear in mind that Mr P expressed this view after several interventions from HSBC which served only to confuse him. He was clearly frustrated by having to make multiple phone calls about these payments, waiting to speak to an employee of the bank and then being left uncertain about the purpose of those interventions. In short, I don't think the fact that Mr P went on to say he would close his HSBC account is an indication of how he would've responded if HSBC had handled that first call appropriately.*

*I recognise that Mr P transferred money to an account in his own name, rather than directly to the fraudster. He remained in control of his money after he made the payments from his HSBC account and so further steps were needed before the money was lost to the fraudsters. However, I am satisfied that it would be fair to hold HSBC responsible for his losses. As I have explained, the potential for multi-stage scams ought to have been well known to HSBC and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.*

*HSBC said that the Investigator's explanation of causation founded on “foreseeability” was flawed. It says Mr P's actions in moving his funds from his account with R onwards into the ultimate control of the fraudsters was a break in the chain of causation. I've considered what the law says about causation, but also kept in mind that my role is to decide Mr P's complaint based on what I consider to be fair and reasonable in all the circumstances. The courts have avoided creating formal tests for causation and so findings on this kind of question are necessarily case*

*specific. I'm certainly not persuaded that his action in asking R to move his funds on without him recognising the risks he was running should mean that HSBC cannot be considered a cause of his subsequent losses. Mr P didn't understand the risks he was exposed to. In my view, HSBC was the principal cause of that misunderstanding. For that reason, overall, I'm satisfied that the way HSBC responded to the fraud risk evident in those early phone calls here was a sufficiently substantial cause of Mr P's subsequent losses.*

### Contributory negligence

*I have thought about whether Mr P should bear some responsibility for his own losses by way of contributory negligence. Although contributory negligence is subject to an objective test in the courts, in considering what's fair and reasonable, I've factored in his vulnerability when considering the extent of any deduction for contributory negligence.*

*There's little question that Mr P would be considered vulnerable. The FCA's "Guidance for firms on the fair treatment of vulnerable customers" says that vulnerable customers are those who "due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care." That guidance paper sets out four key drivers of vulnerability. The second of these is "life events such as bereavement, job loss or relationship breakdown."*

*Several months prior to the scam commencing, Mr P had lost two members of his close family in tragic circumstances. As a consequence, he was extremely isolated. He also told an HSBC employee that his wife had been responsible for managing household finances. He suffered with severe depression and has since been given a diagnosis of bipolar disorder, a condition which has a well understood association with impaired judgement when it comes to financial decision making.*

*It's noteworthy that he hadn't been promised a specific return by the fraudster. He was told that the returns earned were dependent on market conditions generally and so nothing could be guaranteed. He was also persuaded by an apparently professional looking website and a fake trading platform. Mr P tells me that he took his device into an HSBC branch and showed the trading platform to a member of staff who didn't have any obvious concerns with what they saw. I wouldn't expect an employee working in the branch to be able to spot a scam based on that kind of evidence alone, but it would likely have reassured Mr P that he hadn't fallen victim to a scam. He found some critical reviews online and queried these with the scammer who reassured him that they were a new business and that all firms receive at least some negative reviews. Overall, I'm not persuaded that it would be fair and reasonable for Mr P to bear responsibility for his own losses.*

*HSBC says it doesn't accept that his difficult personal circumstances impacted his decision making. But I don't think it's at all realistic to think that a person in Mr P's circumstances wouldn't find they had an impaired ability to critically assess the information that was being presented to them and judge for themselves what level of risk they were exposing themselves to. I recognise that HSBC might not have been aware of the full extent of Mr P's vulnerability. Nonetheless, I think it's a relevant factor when determining whether he acted reasonably in the circumstances. The combination of the fraudster's persuasiveness and Mr P's personal circumstances persuade me that he was simply the unwitting victim of an experienced fraudster. On the particular facts of this case, I'm satisfied there was no contributory negligence.*

### Apportionment of liability

*I'm mindful of the fact that HSBC was not the only firm involved in these transfers. The process of him losing his money began when he started making transfers from his account with HSBC to his account with R. As I've explained, I don't think this means HSBC shouldn't have any liability for the losses he suffered. However, I am persuaded that liability should be shared with R.*

*Mr P has referred a complaint to this service about the actions of R which will be decided separately. However, I'm satisfied that R, like HSBC, had ample opportunity to protect Mr P from the risk of financial harm here, but failed to do so. For that reason, I find that the fair and reasonable way to resolve this complaint is for both HSBC and R to share 50% liability each for the money Mr P lost to the scam.*

I explained that I was minded to uphold Mr P's complaint and direct HSBC to refund 50% of the money he lost to the scam and to add interest.

HSBC responded to say that it disagreed with the provisional decision, but it didn't make any new arguments or submit further evidence for consideration. In the absence of further submissions from either party, I don't see any reason to depart from the conclusions I reached in the provisional decision. I'm therefore upholding Mr P's complaint for the reasons that are set out above.

### **Final decision**

For the reasons I've explained, I uphold this complaint. If Mr P accepts my final decision, HSBC UK Bank Plc needs to refund 50% of the payments he made in connection with the scam. It should also add 8% simple interest per annum to those payments calculated to run from the date the payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 October 2024.

James Kimmitt  
**Ombudsman**