DRN-5173234

The complaint

Mr M complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost to an investment scam.

He's represented by a firm of solicitors. To keep things simple, I'll refer to Mr M throughout this decision.

What happened

The background to this complaint is known to both parties. I won't repeat all the details here.

In summary, Mr M says that, in September 2022, he was messaged by an individual about investment opportunities in binary currencies. Although the contact was unexpected, the opportunity appealed to him. He later discovered he'd connected with a scammer.

Believing the opportunity was genuine, he started to 'invest' as instructed. He was tricked into thinking his 'balance' was growing. And, on the scammer's advice, made a series of payments between September and December 2022. These were sent from HSBC to his accounts with crypto-exchanges. From there, his cryptocurrency was sent to the scam.

He realised he'd been scammed when he tried to make a withdrawal but was told he needed to pay fees/taxes for that to happen. When he questioned why, having paid these, he still couldn't withdraw, the scammer ended all contact. By that time, over £80,000 had been lost to the scam. Most of the money used was from loans Mr M took out with separate lenders and borrowing from friends and family. About £10,000 came from savings.

The scam was reported in February 2024. A complaint was raised and referred to our Service. Our Investigator didn't uphold it. In brief, he noted HSBC had intervened on several of the disputed payments. And, given what happened during those interactions, he wasn't persuaded Mr M would have been upfront about what was really happening, such that the scam would have likely been unravelled even if HSBC had gone further than it did.

As the matter couldn't be resolved informally, it's been passed to me to decide.

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, I've decided not to uphold it for similar reasons as the Investigator.

Authorisation

It's not in dispute Mr M was scammed and I'm sorry about the impact the whole experience has had on him. It's also not in dispute that he authorised the payments from his HSBC account. So, although he didn't intend the money to go to a scammer, under the Payment Services Regulations 2017, Mr M is presumed liable for his losses in the first instance. And as the Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

Prevention and causation

There are, however, some situations where I consider that a firm (like HSBC) taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment – if, for example, it's particularly suspicious.

In this case, I agree there was enough about some of Mr M's payments for HSBC to have stepped in on concerns that he may be at a heightened risk of financial harm from fraud – considering, for example, some of their values and spending patterns that developed. But I'm not going to go into detail as to when and why HSBC should have intervened because, as referred to by our Investigator, HSBC did intervene on several payments. And, even if it should arguably have done more at times, I'm not persuaded proportionate interventions would likely have made a difference, such that I can reasonably hold it liable for his losses.

There's evidence to show HSBC intervened on at least ten occasions to ask Mr M more about the circumstances surrounding his payments. The calls on file start from 10 November 2022. I'm not convinced HSBC should have clearly stepped in sooner than that in view of Mr M's account history. And I can't overlook Mr M's responses to some key questions were inconsistent with the truth and what he's told us was really happening at the time.

In all calls, for example, Mr M was asked to provide some background around his payments and what had prompted him to make them. He was also asked if he was investing into a 'scheme' that was offering significantly high returns. But, at no point, during any of the calls, was there any indication he'd been contacted unexpectedly, or was sending payments to an 'investment platform', or that an 'account manager' was involved.

From what Mr M has told us, he followed the scammer's advice as he was "*inexperienced in this field and believed he would benefit from having guidance from an expert investor".* On 10 November 2022 though, when asked what had attracted him to 'trading', he told HSBC *"that's what I do for a living".* On 15 November 2023, he told HSBC he'd been trading for a few years; was mostly holding the cryptocurrency for the long term; and that *"in [his] opinion"* this was a good time to buy. On 16 November 2023, he told HSBC he was buying crypto and shares and had been *"investing for the past 10 years"*. On 19 November 2023 when again asked if he was investing into a scheme offering significantly high returns, Mr M said *"no, I'm putting into my own crypto account"* and later *"I'm a trader, that's what I do".*

I note that each time Mr M was asked if he'd received any contact from a third-party asking him to make payments, he replied *"no".* I further note Mr M has told us payments from 2 December 2022 were for tax. But that's not what HSBC was told in interactions that followed. On 3 December 2022, when asked about what had prompted him to make the payment, he told HSBC *"I trade in crypto and foreign currency…I'm putting money into my account so I can do the trade".* He also said he'd be transferring more money. As in earlier calls, Mr M was warned of criminals using sophisticated investment scams to get a victim's money. He was told criminals will ask victims not to discuss things with the bank to ensure payments go through. But when asked if the payment was for investment offering high returns, he said *"no, I'm transferring to my account".* He again said there was no contact with a third-party asking him to make payments. On 8 December 2022, when asked for the payment reason, he told HSBC it was the same as the one given many times before; that he was sending the funds to his account for *"currency trading";* and that he didn't have a different answer to any of the questions previously asked. When asked if he was getting help from financial advisers with his investment, he said *"I'm doing it by myself, I've been doing it for years".* And when asked about third-party credits, which was money borrowed to fund the scam, he told HSBC that was a return of money he was owed.

I'm again mindful HSBC should arguably have done more with some of its interventions. At the same time, I can understand why Mr M's responses made it more difficult for it to establish that a scam was taking place. It's also important to note that for me to uphold this complaint, requires more than a finding that HSBC should have done more. I'd need to be satisfied that, but for any failings on its part, Mr M wouldn't have lost his money. In my view, given the number of interventions and how they played out (including Mr M's answers to key questions and warnings that were given), I'm not convinced further probing /warnings would likely have led to the scam being exposed. And, as a matter of causation, I can't hold HSBC liable for his losses where I think it's unlikely it could have prevented them.

I'll add here Mr M has himself described why he believed in the 'investment'. He's told us he was under the scammer's spell. I don't underestimate the tactics used to make it convincing. And given we've also been provided with little to show his communication with the scammer (a couple of screenshots of messages and an email from May 2023 which looks unrelated to the scam 'investment' payments), I don't have enough to gauge what was going through his mind when payments were made or how his relationship with the scammer was developing such that I might be persuaded, for example, there came a point he'd have likely been more forthcoming or responded differently to further probing or warnings.

This isn't a decision I've made lightly. I'm sorry Mr M was the victim of a cruel scam that's affected him deeply. But, as before, I can only direct HSBC to refund his losses if I'm satisfied any failings on its part made a material difference to what happened. For the reasons I've given, and on balance, I'm not convinced they did. In terms of recovery, there was little HSBC could have done. For the card payments, it's unlikely a chargeback had any prospect of success, as there's no dispute the merchants provided the cryptocurrency as intended. For the transfers, those funds had been sent on to the scammer by the time the matter was reported or they would have otherwise been recoverable by Mr M himself.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 August 2025.

Thomas Cardia
Ombudsman