

The complaint

Mr A complains that HSBC UK Bank Plc won't refund the money he lost in a cryptocurrency investment scam. Mr A is represented in this complaint, but I'll refer to him as it's his complaint.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr A was referred to an investment opportunity with Company N, a multi-level marketing (MLM) business (selling products to family and friends and recruiting other people to do the same) by a group of friends.

Company N, based in Country A, was running a crypto asset investment program investing funds on crypto asset and foreign exchange markets.

In a six month period, between April and September 2022, Mr A paid money from his HSBC bank account to a cryptocurrency exchange (Company F) to invest in Company N. Mr A made the following five payments totalling £13,260:

| Payment Number | Date | Payment Method | Payee | Amount |
|----------------|-------------------|----------------|-----------|----------------|
| 1 | 29 April 2022 | Faster payment | Company F | £10 |
| 2 | 29 April 2022 | Faster payment | Company F | £8,050 |
| 3 | 3 May 2022 | Faster payment | Company F | £200 |
| 4 | 20 May 2022 | Faster payment | Company F | £3,000 |
| 5 | 29 September 2022 | Faster payment | Company F | £2,000 |
| Total | | | | £13,260 |

Mr A explains that:

- In February 2023, Company N collapsed and their directors who he believes to be '*serial Ponzi promoters*' disappeared
- He considers that Company N '*was an MLM crypto Ponzi launched in 2019*' and says it is '*widely accepted to have been a scam*'
- He discovered there was information available in 2022, that Company N was associated with fraudulent activities

In June 2024, Mr A complained to HSBC looking for a refund of his loss under the Contingent Reimbursement Model (CRM Code), 8% simple interest and £1,000 compensation for poor service. This is because he believes HSBC were negligent in releasing the funds due to their warnings being ineffective.

HSBC didn't uphold his complaint. Although they accept Company N became a Ponzi scheme, they currently don't consider the investment to have been a scam. They pointed to a civil litigation in Country A about Company N, indicating that it may have started out as a legitimate business and then gone bad. They advised Mr A to join the civil action in Country A.

Mr A brought his dispute to our service. Our investigator didn't uphold his complaint and said:

- *Mr A 'made the payments likely as a result of fraud and I'm really sorry he lost this money. But having looked into what happened, I don't think HSBC should reasonably have been expected to prevent this, even if what has come to pass was an APP scam.'*

As Mr A remains dissatisfied, his complaint has been referred to me to look at afresh.

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'm not upholding this complaint, and I'll explain why.

I'd first like to say:

- I'm very sorry to hear that Mr A has lost a significant amount of money here
- Although I don't underestimate the severe impact this has had on Mr A I must approach this matter objectively
- I've carefully considered all the points Mr A and HSBC have made, and I've focused on what I think are the important points to reach a final decision
- In making my findings, I must consider the evidence that is available to me and use it to decide what I consider is more likely than not to have happened, on the balance of probabilities
- As there is a dispute over whether or not there was an intent for Company N to scam Mr A, I looked closely at the available information.

Although I don't think HSBC's view, that Company N may have started as a genuine investment and subsequently became a Ponzi scheme, is unreasonable, I noted the following:

- Company N and its owners are facing charges from a government agency in Country A, which is responsible for regulating the securities markets and protecting investors. There is documentation that the charges prepared by a multi-agency investigation against Company N and its owners / promoters include the following:
 - *'Operating a fraudulent scheme that raised more than \$650 million in crypto assets from more than 200,000 investors worldwide*
 - *Lured investors by claiming Company N would invest their funds on crypto asset and foreign exchange markets*
 - *X's (the owners) siphoned millions of dollars of investor assets for themselves'.*

These allegations were made less than twelve months ago (August 2024) which means the regulator's evidence hasn't yet been tested in a court of law in Country A. However, when considering:

- The type of multiple government agencies involved (including credible prosecutor's office, Crypto Assets and Cyber Units and agencies from another country)
- The required evidential and public interest tests to bring a case to the type of court

I think, on balance of probabilities, it is more likely than not that when the investment with Company N was promoted to Mr A's friends and then himself, it was an investment scam that used investors' money rather than a business that subsequently failed.

- Although I think it was an investment scam and note HSBC is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which requires firms to reimburse customers who have been the victim of a scam, in most circumstances, I'm satisfied this code doesn't apply here. This is because:
 - The CRM Code sets out under 'DS1(2) (a)' the scope of what the CRM Code covers in relation to authorised push payment ("APP") fraud. And that in instances where: "(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."
 - The payments Mr A made from his HSBC account went to an account in his own name. So, it isn't covered by or within the scope of the CRM Code. This is because Mr A wasn't paying 'another person'.

Payment Services Regulations (2017)

In broad terms, the starting position in 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, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

It isn't in dispute here that Mr A authorised HSBC to make the five payments totalling £13,260 from his account with them. Although he didn't intend the money to go to a scammer, the starting position in law is that HSBC was obliged to follow his payment instruction and Mr A isn't automatically entitled to a refund.

Banks though have a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

However, they do have to strike a balance between the extent to which they intervene in payments to try and prevent fraud and/or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions.

Whilst the scam took place in 2022, I considered whether HSBC should at that time fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks such as anti-money laundering and preventing fraud and scams.
- Have 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 make 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

In line with the above, I would've expected HSBC to step in, at transaction 2, to protect Mr A as it was a large amount going to a crypto exchange.

Mr A doesn't dispute that HSBC put a human intervention in place on the day of his first large payment (payment 2) to Company F, for the funds to be converted into crypto and then sent to Company N. But he considers there to have been a lack of diligence from the HSBC agent. Mr A considers that the following type of probing questions should've been asked:

- a) Where is the final destination of the crypto?
- b) What was the investment and promised returns?
- c) What was Mr A's investment history and experience including in crypto?
- d) Was a broker involved?
- e) Was he on online group chats?

And the answers to these questions would've identified he was at a risk, the investment could be a scam and prevented him from making payments and losing his funds.

Having listened to the call recording I found the HSBC agent didn't know why the payment had flagged and, even when Mr A mentioned it was for an investment, he didn't ask him any questions. So, I don't think the scam intervention here was good enough.

Having established that the intervention call lacked diligence, I considered whether questions (such as those in a to e above) and further probing would've exposed the scam or caused Mr A to make a different decision and not invest in this scam.

Having done so, I'm also not persuaded that it would've. My reasons for saying this are:

- There wasn't any information available at the time that this was an investment scam or that the broker was a fraudster. Also, an investment broker does not automatically indicate a scam and I wouldn't expect a bank to research an individual.
- Whilst I appreciate Mr A's lack of investment experience, accept promotional videos may have been part of the scam and think a more diligent intervention would've communicated general risks around cryptocurrency, high return rates, promotions, Company N being regulated in another country, I noted the following:
 - Mr A wasn't approached by a cold call from someone he didn't know
 - Mr A was already aware of such risk factors. He had done some research but didn't find anything untoward and was part of an investment group comprised of friends he trusted.
 - There is a social messenger group, involving Mr A, that shows his friends, some of whom were making profits, recognised crypto and hedge fund volatility and risks, considered Company N not being regulated in the UK but being licensed in Country A (which they said was the 'toughest jurisdiction'). They also undertook what they thought was independent research and recognised people they knew were skeptical.

So, based on the above, even if there had been an effective intervention here, I'm not persuaded the scam would've been uncovered or Mr A would've been deterred from going ahead.

Finally, regarding any attempts to recover the funds, the faster payments went to Company F and Mr A's cryptocurrency wallet and from there to the investment platform. So, I don't

think HSBC had any prospect of success here. Mr A had moved the funds on and so there was nothing left to recover.

Having considered all the available information, whilst I'm very sorry to hear that Mr A has lost a large amount of money here, I'm not upholding this complaint against HSBC UK Bank Plc.

My final decision

My final decision is that I'm not upholding this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 June 2025.

Paul Douglas
Ombudsman