

## complaint

Mr O complains that HSBC UK Bank Plc didn't do enough to help him when he was the victim of a scam.

## background

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

In April 2018, Mr O responded to an online advert to invest in crypto currency with a company I'll refer to as 'C'. He completed an online enquiry form and was later contacted by a representative from C. He was taken through an account opening process and later made a series of payments from his HSBC account to the account details provided by C to fund his 'investment'.

Mr O was provided with access to an online account where he could monitor his supposed investments. It was explained that C would invest his money for him. In December 2018, C tried to entice Mr O to invest more. When he said no, he lost access to his online account. He made numerous attempts to contact C by phone and email without success.

Mr O then realised he'd been the victim of a scam and, in January 2019, reported this to HSBC. HSBC said they wouldn't refund Mr O as they'd followed his instructions when sending the payments. They also said they would contact the beneficiary banks to attempt to recover the funds. Mr O complained as he was unhappy with a lack of progress and updates from HSBC.

When HSBC maintained their position, the matter was referred to our service. One of our investigators didn't think the complaint should be upheld. In summary, he didn't think Mr O's payments were so unusual that HSBC ought to have intervened. He also thought HSBC had done what they could to recover the funds. As he disagrees, Mr O has asked for an ombudsman to review his complaint.

Below is a table of the payments (totalling £6,200) that Mr O made as a result of the scam. These all took place through Mr O's online banking.

Date	Beneficiary Bank	Amount
30 May 2018	P	£2,500
29 June 2018	L	£1,200
1 October 2018	HSBC	£1,000
17 October 2018	HSBC	£1,500

In September 2020 I issued a provisional decision in which I said:

*"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 concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold the complaint for the following reasons:*

1. *It is common ground that Mr O authorised each of the payments totalling £6,200. He believed at the time he was making genuine investments. I accept that these were all 'authorised' payments insofar as Mr O intended to send the monies to the scammer (because, at that time, he was unaware he was being scammed). Accordingly, under the account contract and Payment Services Regulations, HSBC had a duty to execute his instructions without undue delay — unless its 'due diligence' warning systems were triggered such as to give a reasonable banker grounds for suspecting fraud or financial crime by or against the customer. As such, Mr O is liable for the loss in the first instance.*
2. *However, taking account of the law, regulatory rules and guidance, relevant codes of practice and good industry practice at the time, I consider it would have been fair and reasonable for HSBC to have:*
  - *Monitored accounts – and any payments made or received – in order to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;*
  - *Maintained systems to look out for unusual and uncharacteristic transactions, or other indicators that their customers were at risk of fraud (amongst other things), particularly given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer;*
  - *Taken additional steps or made additional checks in some circumstances – irrespective of the payment channel used – before processing the payment; or in some cases, to have declined to make a payment altogether in order to help protect customers from the possibility of financial harm from fraud.*
3. *I consider that, on 30 May 2018, when Mr O authorised the first payment, there were clear triggers which ought reasonably to have alerted HSBC to unusual and/or uncharacteristic activity by Mr O with regard to his account, irrespective of the payment channel used. HSBC should, in my opinion, have acted on these by taking additional steps, or making additional checks, before processing the payment, as it was reasonably foreseeable that not doing so might result in this sort of financial harm.*
4. *In Mr O's case, I'm satisfied there were the following triggers to alert HSBC to the possibility of a fraud or scam:*
  - *The payment of £2,500 was an unusually large amount. I've looked at Mr O's statements going back to December 2017, which I consider gives a fair sample size to assess what typical activity for his account was. The account appears to have primarily been used for day-to-day spending. There are card payments, cash withdrawals and online payments. There are infrequent higher value transactions, the largest of which was a bill payment for just under £1,500 in January 2018. But most payments were for a few hundred pounds or less.*
  - *The payment represented a sudden and uncharacteristic increase in spending from the account.*
  - *The payment was to a new payee.*
  - *The payment was made to an account with 'P' who primarily specialise in pre-paid credit card accounts.*
5. *The beneficiary of this first payment is a relevant factor. In my experience, a lot of fraudulent payments go onto pre-paid cards and this is something I think HSBC, as a*

*large international bank, ought fairly and reasonably to have been aware of at the time. It's commonly known by banks that pre-paid card companies are vehicles that fraudsters often use when asking their victims to transfer money. So, the recipient bank, with their primary business being pre-paid cards, presented an additional risk to the transaction. And on top of this, I'm mindful the payment Mr O made was for £2,500. This is a large amount for someone to move onto a pre-paid card. It's fair and reasonable for a bank to look out for anything unusual in relation to a transaction or payment instruction.*

- 6. Ultimately, it's a matter for HSBC and/or the regulator as to how they choose to configure their fraud detection systems given the balance between the duty of care towards clients and the duty to execute instructions without undue delay. But on the facts and evidence before me, I am satisfied that HSBC could and should reasonably have made additional checks with Mr O before they let the first payment through. There were enough triggers of unusual or uncharacteristic activity such that, in my view, a prudent and professional banker could and should have realised that something didn't look quite right – and that further enquiries would be appropriate before going further. I therefore conclude that, in failing to do this, HSBC didn't do enough to protect Mr O from the risk of loss.*
- 7. So, I've gone on to consider whether HSBC's intervention at this point would have made a difference – it's essential for any failing to have caused the loss. Here, if HSBC had contacted Mr O, I would have expected them to have asked probing questions with the aim of uncovering a potential scam and not necessarily to have taken Mr O's answers at face value (because banks know that victims are often coached into giving cover stories by the scammers). I think Mr O would probably have explained that he was making an investment in crypto currency – this is what he believed he was doing at the time. At this point, it's likely it would quickly have become apparent to HSBC that he was in the process of being scammed. HSBC would or should have then told him the payment he was instructing was going to a business who specialise in pre-paid credit cards. This would have been at odds with what Mr O was expecting (a payment being made to C to be invested on his behalf).*
- 8. It's also likely that HSBC would have warned Mr O that this is a common means used by scammers to accept payments and that the area of crypto currency is one where unfortunately fraud was prevalent. I think this would have quickly unravelled the scam. I think it's most likely that Mr O would have withdrawn his instruction to make the payment and this loss would have been prevented. It is reasonable to conclude that, if the scam had been stopped at this first payment, then all the subsequent payments (and the resultant losses) would also have been prevented.*
- 9. I've also thought about if Mr O hadn't answered the contact from HSBC by being unable to take a call or similar. I don't think HSBC could fairly have concluded that being unable to contact Mr O was reasonable reassurance that he wasn't at risk of financial harm. And in those circumstances, I'd have expected them to hold the payment until they had been able to speak to him.*
- 10. I've also considered whether Mr O should bear some responsibility by way of contributory negligence. However, it is clear that at the time of making the payments, Mr O believed this to be a genuine investment. He was taken through an account opening process and was also provided with access to an online portal showing his investments. These steps and this provision closely follow those of legitimate*

*investment firms. Mr O has worked in banking and was further persuaded by the accurate technical terminology used by C's representative. The Financial Conduct Authority published a warning on their website about C in October 2019, but this was long after Mr O had realised he'd been the victim of a scam. Considering all the above, I don't think it can fairly be said that Mr O was negligent. Mr O was an unwitting victim of cunning fraudsters. HSBC are the finance professionals whereas Mr O was a consumer for the purpose of these transactions.*

- 11. In the circumstances, I'm satisfied it would be fair and reasonable for HSBC to reimburse Mr O for the loss he suffered without any reduction, together with interest to compensate him for being deprived of the money he lost from his account.*
- 12. Much of the complaint to date has focussed on HSBC's efforts to recover Mr O's funds. Particular attention has been paid to the beneficiary account of the final two payments which was also held with HSBC. I understand this account was subject to an Account Freezing Order issued by a court in December 2018. This would have understandably limited the actions HSBC were able to take in relation to that account when Mr O reported the scam in January 2019. But as I'm satisfied HSBC's failure to intervene at the first payment is the dominant, effective cause of Mr O's losses, it's unnecessary to make detailed findings in relation to their efforts to recover the funds. I do, however, note that both P and L confirmed to HSBC that no funds remained to be returned in the beneficiary accounts – and, indeed, it tends to be a feature of fraud and scams that scammers very quickly withdraw the stolen funds precisely to defeat this sort of recovery attempt.*
- 13. HSBC have accepted that some of the service they provided around giving updates to Mr O was lacking and they offered him £50 compensation for the impact of this. I've carefully considered all the circumstances and I'm of the opinion that HSBC's handling of this matter as a whole has caused Mr O material distress and inconvenience. I've kept in mind that much of his distress was caused by the criminal act of the scammer who tricked him into making the payments – but HSBC could ultimately have prevented this. As such, I think a total of £300 is a fair amount of compensation for distress or inconvenience.*

*my provisional decision*

*For the reasons outlined above, but subject to any further information I receive from either HSBC or Mr O, I'm intending to uphold this complaint and direct that HSBC UK Bank Plc pay Mr O the following:*

- £6,200 for the payments he lost as a result of the scam (less any amounts recovered (if any) from the payee banks and already reimbursed to Mr O); plus*
- £300 compensation for distress and inconvenience caused (if the £50 referred to above has already been paid then only a further £250 needs to be paid).*

*HSBC should also pay interest on this proposed award (save for the distress and inconvenience) at our usual rate of 8% simple per year from the respective dates of the scam payments to the date of actual refund. But interest will also accrue at that rate on the £300 for distress and inconvenience if it is not paid within 28 days of HSBC receiving notification of Mr O's acceptance of my final decision."*

Both HSBC and Mr O responded to say they accepted my provisional decision.

### **my findings**

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

As neither party had any further submissions or comments for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **my final decision**

For the reasons outlined above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must pay Mr O the following:

- £6,200 for the payments he lost as a result of the scam (less any amounts recovered (if any) from the payee banks and already reimbursed to Mr O); plus
- £300 compensation for distress and inconvenience caused (if the £50 referred to above has already been paid then only a further £250 needs to be paid).

HSBC should also pay interest on this award (save for the distress and inconvenience) at our usual rate of 8% simple per year from the respective dates of the scam payments to the date of actual refund. But interest will also accrue at that rate on the £300 for distress and inconvenience if it is not paid within 28 days of HSBC receiving notification of Mr O's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 November 2020.

Richard Annandale  
**ombudsman**