

## **The complaint**

Mr and Mrs S are unhappy that HSBC UK Bank Plc won't reimburse them for the money they lost when Mr S fell victim to a scam.

## **What happened**

Mr and Mrs S are represented in this complaint by a solicitor, for simplicity I will refer to Mr and Mrs S throughout this decision, even when referencing what their representatives have said on their behalf.

Mr S was interested in investing in cryptocurrency, and says he had researched it online. Mr S made an initial small investment – of £25 – in August 2021 but quickly realised that he would need advice about the trading process and sought the advice of a broker. It appears that he was then contacted by someone claiming to be able to help him with cryptocurrency investment and was encouraged to download remote access software so that this individual could assist him. Mr S was told to send funds to his cryptocurrency account, and then on to a third party.

Between 30 November and 1 December 2021 Mr S made four payments – totalling £33,200 – to his cryptocurrency account and then on to the investment scheme. However, when he said he wanted to withdraw his profits, he was told there were delays and that he hadn't yet invested enough to make a withdrawal. Mr S became concerned at this stage, but was then contacted by someone who he believed was working for the company that administered his cryptocurrency wallet, who told him he would need to make a further payment in order to recover his profits. Mr S then made a payment of £16,600, funded by a loan he took out with HSBC, to facilitate this withdrawal. He then tried to make one last payment of £5,500, but this was flagged by HSBC as potentially suspicious, and after some discussion between Mr S and HSBC it became apparent that he had been the victim of a scam, and that the people he had been dealing with as part of the investment and withdrawal had been scammers. In total Mr S had made payments totalling £49,800 from he and Mrs S' joint account.

Initially, HSBC said it did not think it should be held responsible for Mr and Mrs S' loss, as the payments had been made to another account in Mr S' own name before being passed on to the scammer. Mr and Mrs S were unhappy with HSBC's response and so referred their complaint to our service.

One of our Investigators looked into what had happened, and they felt that HSBC should have stepped in to question Mr and Mrs S about the first scam payment made – which was for £9,000. They felt that, if HSBC had done so, then the scam would have been uncovered and Mr and Mrs S' loss could have been prevented. In their initial view they recommended that HSBC therefore refund all the payments, plus interest.

But HSBC disagreed, it said that there were red flags which should have suggested to Mr S that something untoward might be going on, and so considered that Mr and Mrs S should bear shared responsibility for the loss. And for the last payment made, which was financed by a loan Mr S took out with HSBC, it felt Mr and Mrs S should bear 100% of the

responsibility for their loss, as it said Mr S had lied about the reason for the loan and – had he been honest – he would not have been granted the loan.

Our Investigator felt this offer was fair, as they agreed Mr and Mrs S had not done enough to mitigate their loss. Mr and Mrs S disagreed, so as no agreement could be reached, this case was passed to me for review.

I issued my provisional decision on this case on 30 November 2023, explaining why I felt HSBC should refund 50% of all the payments made as a part of this scam, plus interest.

Mr and Mrs S accepted by provisional decision, but HSBC did not, and it provided further comments on why it did not feel the outcome I was proposing was fair and reasonable.

### **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.

In my provisional decision I explained the following:

*"It's not disputed that Mr S authorised the payments that are in dispute. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr and Mrs S are responsible for them. That remains the case even though Mr S was the unfortunate victim of a scam.*

*Because of this, Mr and Mrs S are not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.*

*Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr and Mrs S, or whether it should have done more than it did.*

*Mr and Mrs S' HSBC account was one they used regularly for day-to-day expenses, so there was a significant transaction history for HSBC to compare any new payments to. And Mr and Mrs S did, on occasion, make high value transfers from their account, but generally to their own savings accounts. I also acknowledge that the payments in dispute here were made to a cryptocurrency account in Mr S's own name and that he had paid before. However, just because a payment is to an account in the consumer's own name that does not mean it bears no risk, and I would still expect HSBC to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.*

*So while the first scam payment was to a known beneficiary (Mr S had made a small payment to it a few months prior) I agree with our Investigator that it should nonetheless have been flagged as potentially suspicious to HSBC. I say this because the £9,000 payment was significantly higher than any other similar payment made from the account in the previous six months, was to a cryptocurrency provider, and was preceded by a significant transfer into the account from Mr and Mrs S' savings. So I think that what was happening did have some of the hallmarks of an investment scam, and I therefore think HSBC should have contacted Mr and Mrs S directly to ask them some questions before allowing this payment to go through.*

*The question I must then consider is whether any intervention at that stage would have unravelled the scam and prevented any further loss. HSBC has said that, when it did speak with Mr S on 3 and 6 December, it took more than one call to convince him that he was the victim of a scam, and by that stage there were more red flags – such as the fact that Mr S had been asked to pay fees to facilitate the withdrawal of his profits – which led to the unravelling of the scam. So HSBC does not consider that it is likely the spell could have been broken earlier.*

*I've listened to the conversations HSBC had with Mr S. And I note that, in the first call with Mr S on 3 December, HSBC did give a detailed warning about the features of cryptocurrency investment scams. But it wasn't until after two more calls had taken place on 6 December – and Mr S had tried to make another payment related to the scam in the intervening period – that Mr S realised he'd been the victim of a scam.*

*I appreciate that the warnings Mr S was given on the 3 and 6 December did not appear to immediately flag to him that what he was involved with was a scam, but the fact remains that, after apparently reflecting on what had happened, these calls do seem to have ultimately broken the spell that Mr S was under and revealed the scam to him. And I think it's worth noting that no further payments were actually made to the scammer after the intervention from HSBC on 3 December. HSBC has noted that Mr S was asked to do checks on the beneficiary in these calls but does not appear to have done those checks, but from listening to the calls it seems that the focus of these checks he was told to do was on whether the account he was making the payment to was legitimate (i.e. was he being tricked into paying the wrong account details) rather than on whether the investment opportunity was legitimate. So I can understand why Mr S didn't necessarily feel the need to check the legitimacy of the account details as it was, after all, his own cryptocurrency account that he was making payments to.*

*I understand that, had HSBC given these warnings earlier then some of the red flags it noted – specifically that scammers often ask for further payments before they will release any profits – hadn't happened yet. But, overall, I think it's more likely than not that detailed cryptocurrency scam warnings at the start could have had a real impact on whether Mr S went ahead with the scam payments. He'd have been less mentally invested at that stage, and likely much more open to accepting that he might be at risk.*

*So I consider that it is fair to ask HSBC to refund the payments made as a result of the scam, as I think it could have prevented that loss if it had intervened earlier. However, I've also gone on to consider whether Mr and Mrs S should also bear some responsibility for their loss. And having carefully considered what we've been told by Mr and Mrs S and by HSBC I do think they should share responsibility for the loss with HSBC.*

*I say this because Mr S has now told us that he was contacted out of the blue by the individual who ultimately 'helped' him to make his investments. He doesn't though appear to have done any due diligence or research of his own to check whether that individual was a legitimate broker or otherwise a trustworthy individual. And there were features of what Mr S was involved with that I think should have suggested to him that all might not be as it seemed. In one of the calls with HSBC Mr S says he's made £64,000 profit after investing £40,000. This would be an extremely large return on his investment after only a few days, and I think really should have been considered too good to be true. Mr S was also told to lie about his reasons for taking out the loan with HSBC so that it would be approved quicker, and I don't think it is reasonable to believe that a legitimate business would tell him to do this.*

*With this in mind, I think it's fair and reasonable for Mr and Mrs S to bear responsibility for 50% of the loss they incurred.*

*HSBC has said that, for the £16,600 payment Mr S made – the last payment that was processed as a result of the scam – it does not feel it should have to bear any responsibility for that loss. It says this is because this payment was funded by a loan that Mr S had lied to obtain – saying it was for home improvements when that was not the case. I can understand why HSBC feels this way, but given that I feel it should have intervened well before this loan was agreed, I consider that it is reasonable for HSBC to share responsibility for this last payment, as all the subsequent losses do stem from that initial payment when I think HSBC should have intervened.*

*I've also considered whether HSBC could have done more to recover Mr and Mrs S' funds when it was made aware of the scam. However, because they went to a cryptocurrency account in Mr S's name and were then exchanged into cryptocurrency before being passed on to the scammer, there was nothing further HSBC could do to try and recover them.*

*So, in summary, I intend to find that HSBC could have done more to protect Mr and Mrs S from the risk of financial harm. And, had HSBC contacted Mr and Mrs S directly and asked some open questions about what was happening at the time of the first payment, I'm persuaded it is more likely than not the scam would have come to light, and Mr and Mrs S wouldn't have lost out on the funds they then went on to transfer. I do though consider that Mr and Mrs S should also share responsibility for their loss here.*

*So I'm currently intending to find that it is fair and reasonable for HSBC to refund 50% of the payments made as a result of the scam, along with interest at our standard compensatory rate of 8%."*

HSBC has provided some further comments following my provisional decision, but I'm satisfied that I have already considered all those points and nothing HSBC has said changes my decision that it is fair for it to refund 50% of the payments made as a result of the scam.

However, HSBC has also noted that, aside from the last payment made – which was financed by the loan – the rest of the funds paid out to the scammers came from a savings account. So HSBC has said it considers it would be fairer for any interest I ask it to pay on that amount to reflect the savings account rate rather than our standard 8% compensatory interest rate. On reflection, I agree with HSBC regarding this issue. As a result, instead of 8% simple interest, I consider it would be fair and reasonable to instead award interest at the applicable savings account rate on the funds that came from savings, as this is closer to what Mr and Mrs S would've otherwise earned, had their money not been lost to the scam.

## **Putting things right**

To resolve this complaint HSBC should:

- Refund to Mr and Mrs S 50% of the payments made as a result of the scam – representing a refund of £24,900
- Pay interest on the portion of this refund relating to the first four payments made at the applicable savings account rate, calculated from the date each payment was made to the date of settlement
- Pay interest at our standard compensatory rate of 8% on the portion of the refund relating to the fifth payment made to the scammers, calculated from the date of that payment to the date of settlement.

**My final decision**

I uphold this complaint. HSBC UK Bank Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 1 February 2024.

Sophie Mitchell  
**Ombudsman**