

The complaint

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

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

After falling victim to an investment scam a few years prior, Mr B was contacted by a third party which said it could help recover his loss. Unfortunately, this was also a scam. Mr B was tricked into making payments on the premise he had to pay to release cryptocurrency he was owed in relation to the earlier investment scam.

Overall, Mr B paid just under £10,000 between November 2021 and January 2022. Please note, the investigator listed the last payment as £1,100 in his initial view, but it appears to have been for £950. This doesn't materially affect my outcome, and Mr B's complaint submissions along with HSBC's fraud records show it considered the correct transactions.

Mr B realised he had been scammed as the third party kept asking for more money, but he never received anything back. He reported the scam to HSBC.

HSBC didn't agree to refund Mr B. It maintained this position when he subsequently complained. In summary, it said it wasn't liable as he had authorised the payments. And because he had sent the funds via his cryptocurrency wallet held with a legitimate merchant (C); they hadn't gone directly to the scammer.

Mr B didn't agree, so referred the complaint to our service. Our investigator looked into things but didn't uphold the complaint. They didn't think HSBC should have realised the payments were related to a scam at the time, and didn't think it could have recovered the funds when the scam was reported.

Mr B disagreed. He said the proximity and pattern of the payments ought to have looked concerning as they were out of character for him. The investigator maintained their view, pointing out Mr B had previously made other payments around the same level.

Following this, the investigator identified a call had taken place between Mr B and HSBC before the last few payments, in which there had been a discussion about the scam. The investigator ultimately concluded that, while HSBC could have done a bit more, that wasn't likely to have prevented Mr B from making the further payments – bearing in mind what was discussed and what Mr B knew at the time.

Mr B disagrees with the investigator. He says, if HSBC had given him more warnings during the call, he wouldn't have made the further payments – as he was unaware it was a scam at that point. As no agreement has been reached, the case has 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. I'll explain why.

In line with the Payment Services Regulations 2017, the bank is expected to execute authorised payment instructions without undue delay. While it's agreed Mr B fell victim to a scam, it's also agreed he authorised the payments. So the starting position is that he is liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. I've considered whether HSBC should have done more here.

I don't think the payment destination alone made it obvious Mr B was at risk from fraud. The payments didn't go direct to a known scammer; they first went to Mr B's own wallet with a legitimate cryptocurrency merchant.

I do appreciate the overall value of the scam payments was reasonably high – particularly the payments made over the first few days. But as our investigator highlighted, Mr B had made other payments for similar amounts in the months leading up to the scam. That made the value of the payments appear more in keeping with the expected activity.

There was also a gap of a day between the first payment and the next few, so it didn't appear Mr B was being put under immediate pressure to make a series of payments. There were further gaps between the later payments.

Overall, I'm not persuaded the payments were so unusual that HSBC ought to have identified a fraud risk and performed further checks. However, while I've found it was reasonable that the payments alone didn't prompt fraud concerns, I have considered the wider context of the contact Mr B had with HSBC before making the last two payments.

During the call, there was reference to an earlier call between Mr B and HSBC – but HSBC can't locate this. Regardless, the timeframe given by Mr B makes it clear any prior contact would have been *after* the previous scam payments. So the contact is only relevant to considering the last two payments.

Mr B explained he had done some trading previously, but then the company had disappeared. He had recently been approached and told the company had used his funds to purchase cryptocurrency, which he could reclaim for a fee. He understood he was dealing with a company, N, who is another legitimate cryptocurrency merchant. Mr B explained he had made payments to who he thought were N, via his C account – but hadn't received anything back.

I agree with the investigator that HSBC could have done more to help Mr B in light of the recovery scam he was reporting. That said, I am conscious HSBC covered the following:

- It asked Mr B if he realised the person claiming to be N probably wasn't really them. Mr B responded that the emails looked genuine, but he now thought it was a scam.
- HSBC explained it was probably linked to the earlier investment scam, as that company may have retained his details.
- It ended the call by reiterating that, based on what Mr B had described, it felt strongly this was the original investment scam company was trying to scam him again. It warned N wouldn't have contacted him in this way.

While I agree HSBC should have gone a bit further during the call, I can't think what else it *ought* to have done which would have succeeded in preventing Mr B's further loss.

Mr B has said he didn't realise it was a scam when he spoke to HSBC, so further warnings would have dissuaded him. But at the time, he said he thought it was a scam. And HSBC did also warn him that it probably was.

As our investigator explained, Mr B seems to have proceeded as he then got a further response from 'N'. But as well as discussing it being a scam, HSBC had also told him N wouldn't contact him in this way. As that didn't stop him from proceeding, I'm not persuaded further warnings would have.

I accept HSBC's argument it didn't have cause to think Mr B would continue making payments to the scam. The destination, timings and values of the payments didn't make it obvious they were part of the scam or otherwise of concern. I consider it reasonable that HSBC didn't block the further payments.

I'm also not persuaded HSBC could have recovered the funds. This is because they were sent directly to Mr B's own wallet with C, before being transferred on to the scammer. So the transfers could not have been recalled. And chargeback claims wouldn't have succeeded for the card payments, as C provided the expected service by loading the funds to the wallet/converting it to cryptocurrency.

I appreciate this will be disappointing for Mr B, who has clearly been the victim of a scam. I understand why he therefore feels strongly about pursuing the matter, to try to recover his loss. But I'm not persuaded failings by HSBC caused or contributed to this. And so I don't consider it fair to direct HSBC to reimburse him, or take other remedial steps (such as paying compensation) in relation to this complaint.

My final decision

For the reasons given, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 November 2023.

Rachel Loughlin
Ombudsman