

The complaint

Mr P is unhappy that HSBC UK Bank Plc will not refund the money he lost as the result of an authorised push payment (APP) scam.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. It concerns the following faster payments, all made via mobile banking from HSBC to Mr P's Coinbase account - and then on to other cryptocurrency wallets.

payment	date	value
1	23/12/2022	£100
2	27/12/2022	£20,000
3	28/12/2022	£20,000

Mr P was contacted with a job opportunity that required him to deposit money in order to access tasks he had to complete to grow the funds he held on account. After he had done this for some time, and kept being foiled by 'super tasks' that in essence prevented him from getting his money back, he realised it was a scam and reported it to HSBC. He says he was very inexperienced in the finance sector and he was particularly vulnerable at the time of the scam due to family circumstances.

HSBC said the payments were not covered by the Contingent Reimbursement Model (CRM) code as they were made to another account in Mr P's name. Also, he had made a number of payments to this account before for a similar value.

Our investigator did not uphold Mr P's account. She said the payments were not out of character for the account and so HSBC was not wrong when it did not intervene.

Mr P disagreed and asked for an ombudsman's review. He said, in summary, there are provisions in both the CRM code and the BSI (British Standards Institution) code that mean HSBC ought to have prevented the fraud.

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 am not upholding Mr P's complaint. I want to reassure Mr P I have carefully considered all the points he made in his initial complaint letter and subsequent submissions to this service. I mean no discourtesy by this, but in keeping with our role as an informal dispute resolution service – and as our rules allow - I will focus here on the points I find to be material to the outcome of his complaint.

There's no dispute that Mr P made and authorised the payments. Mr P knew who he was paying, and the reason why. At the stage he was making these payments, he believed

he was depositing funds to allow him to generate income by completing online tasks. I don't dispute Mr P was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mr P's instructions. So in the first instance Mr P is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were to an account Mr P's name, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that HSBC should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case I don't think HSBC ought to be held liable for the transactions. I don't think the payments were out of character for Mr P's account. This means I cannot fairly find HSBC ought to have identified the transactions as suspicious and taken steps to prevent the fraud.

I say this for a number of reasons. The recipient account was not a new payee – HSBC has provided 12 months of statements and I can see Mr P had moved money to this account as far back as January 2022. And the value of the payments was not unusual for this recipient account – Mr P had transferred a total of £80,000 to it in five separate payments (two were for £25,000) during 2022.

I also can't see there were any of the typical characteristics of scams that ought to have concerned HSBC. The payments were not made in rapid succession, nor did they drain the account. There were no unsuccessful login attempts in Mr P's online banking audit prior to the transactions. And I have not seen any evidence HSBC was on notice that Mr P was vulnerable at the time.

I have also considered whether HSBC did what we would expect to try to recover Mr P's money after the scam was reported. Mr P didn't instruct HSBC to send these payments directly to the scammer, but instead to a Coinbase account in his own name. And that's what HSBC did. I don't think it was ever going to be likely that HSBC would have been able facilitate recovery of these payments after Mr P had moved the payments from his Coinbase account onto the scammer.

This means I am not instructing HSBC to refund any money to Mr P.

This is a difficult decision to make, I'm sorry Mr P lost a considerable amount of money which was very distressing for him. I can understand why he would like to be compensated

for his losses. And I do accept Mr P has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find HSBC can be held liable in the circumstances of this case.

I am aware Mr P has another scam complaint with this service that he has referenced during this investigation: we consider each complaint on its individual merits and I can only comment here on this case.

My final decision

I am not upholding Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 December 2023.

Rebecca Connelley
Ombudsman