

The complaint

Mr S complains that HSBC UK Bank Plc (HSBC) wouldn't refund money he lost in a scam.

What happened

What Mr S says:

Mr S is represented by a third-party claims firm, but I will refer to him as the complainant.

In June 2022, he made contact with a person through a popular online dating website – I will refer to her as 'A'. He exchanged frequent messages with A and began to trust her. After a while, A said she was an experienced trader in crypto investments and introduced him to the idea of also investing in crypto. Mr S opened an account with the online crypto website (which I will call B) - but alongside a scamming exchange platform.

A encouraged Mr S to make several investments and coached him as to how to do it each time. The payments were:

Date	Payment	Amount
25 August 2022	Online - international payment to Estonia	£8,727.33
31 August 2022	Online - international payment to Estonia	£43,734.01
1 September 2022	Online - international payment to Estonia	£44,329.94
2 September 2022	Online - international payment to Estonia	£44,238.31
6 September 2022	Online - international payment to Estonia	£50,000
6 September 2022	Online - international payment to Estonia	£43,919.75
26 September 2022	Refund credit	(£99.54)
28 September 2022	Refund credit	(£909.55)
Total Loss		£233,940.25

Mr S said he could see the investments via the website of B, and that they were growing in value.

Mr S then wanted to make a withdrawal but was told by A that he needed to pay tax of USD89,000. At that point, Mr S became suspicious and questioned A about why that was. She blocked him from all contact. Mr S then realised he was the victim of a romance/ investment scam. He said HSBC asked questions about the payments on 31 August 2022

and 1 September 2022, but they weren't probing questions and HSBC should've done more to protect him.

Mr S said HSBC didn't question the subsequent payments made on 2 September 2022 and 6 September 2022 – and should've done. If HSBC had done so, the scam would've been uncovered and his money protected. The payments were highly unusual and should've triggered intervention each time.

Mr S says he has lost his entire life savings and is now struggling to pay bills. His mental health has suffered, he has lost sleep, and is anxious about all interactions online – for fear of being scammed again. He feels shame and embarrassment at what happened. He contacted HSBC on 12 September 2022 to report the scam. He says HSBC should refund the money he's lost.

What HSBC said:

HSBC didn't refund the payments. They said Mr S had authorised them and they'd been made in accordance with his instructions. HSBC said Mr S should get in touch with the beneficiary bank to try to recover the money.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it and said:

- He listened to the calls between HSBC and Mr S on 31 August 2022, 1 September 2022, and 2 September 2022 – about those payments. He said HSBC asked Mr S many questions about the payments, including the purpose, where the payment was going to, who set up the account with B, who had access to the account, if previous payments had been successfully received and several questions based on the involvement of any third parties. Mr S answered all questions and this led to HSBC to provide warnings based on those answers. During the three calls, Mr S said on many occasions that no third party was involved and that he was making the payments on his own free will.
- On the further two payments on 6 September 2022 - these weren't questioned by HSBC. If HSBC had intervened, our investigator was satisfied that Mr S would've gone ahead anyway – such was the spell he was under with A and based on Mr A's responses to HSBC in the earlier calls.
- HSBC had tried to recover the money and contacted the beneficiary banks but could only recover £1,009.12 – but the rest had been removed.

Mr S didn't accept what our investigator had said. He argued that HSBC's questions didn't go far enough – given that the investment was into crypto. He said that with further questioning, he would have revealed he had been advised by a third party (A); that he hadn't done enough research; that he hadn't taken third party advice; and that he had been given access to a third-party scamming platform.

Mr S said these were all signs of a scam – which HSBC should've been alert to.

Mr S asked that his complaint be referred to an ombudsman – and so it has come to me to make a final decision.

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.

I'm sorry to hear that Mr S has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr S didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to online payments made to a UK beneficiary – and in this case, the payments were made to an overseas account.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr S when he made the payment, or whether they should have done more than they did. I have considered the position carefully.

I considered whether the payments made by Mr S were sufficiently unusual for them to have been questioned by HSBC – given his normal account activity.

I looked at Mr S' account statements.

I can see that he made several large payments prior to the payments in question:

- December 2021: £5,525; £2,000.
- May 2022: £10,000.
- July 2022: £10,000; £10,000; £10,000; £2,108.

Payment - £8,247.33: The first payment to B in August 2022 was therefore not out of character for Mr S.

I would also say that as there's a balance to be struck: HSBC has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in

every transaction as this would cause unnecessary disruption to legitimate payments. So – I’m persuaded that for this payment, HSBC didn’t need to intervene.

Payments £43,734.01, £44,329.94, £44,238.31: I then considered the next three payments. These were for significantly larger amounts, were to an overseas account, and in a currency (euros). So – HSBC were right to refer them, which is what they did.

The crux of this complaint comes down to the calls made by HSBC regarding these three payments. Each time, HSBC contacted Mr S to discuss them. I listened to the calls closely.

30 August 2022 – £43,734.01: HSBC’s fraud team contacted Mr S by text and he called back. The following questions were asked, and Mr S’ responses are shown:

“Did you process the payments yourself?”.. Mr S: “yes”.

“What’s the purpose of the payment?”... Mr S: “Investments”.

“Has anyone else have access to your account with B?”... Mr S: “No”.

“Payment to Estonia seems odd”... Mr S : “Yes - the company is in Ireland, but bank account in Estonia”.

“Did you manually enter the account number etc?”.... Mr S:” already saved from first payment.”

“Have you seen any scam warnings about this company?” ... Mr S: ”No, I’ve seen none”.

“Will you make any more payments to B?” ... Mr S: ”Maybe, if I see the opportunity to make more money.”

“Did you receive any calls from anyone asking you to make the payment?” ... Mr S: ”No”.

“Did a third party ask you to make the payment?”....Mr S:” No”.

“Has anyone asked you how to answer our questions?”... Mr S: ”No”.

HSBC then read out a scam warning: *“criminals are using sophisticated investment scams to get unsuspecting people to hand over money, using convincing websites and marketing material. These can seem legitimate and persons appear knowledgeable. HSBC may not be able to recover money if it turns out to be a scam...are you satisfied this is an authentic request or do you need more time to consider?”*

Mr S answered: *“No, this is absolutely an authentic request, no third party is involved, just me. I’m already in profit, yes it’s my own risk, and I understand the purpose of the call”.*

1 September 2022 – £44,329.94: HSBC’s fraud team called Mr S. The same questions were asked – and Mr S’ answers were the same. He also said, *“these are the same questions and my answers are the same”*. He said the process was a waste of time. HSBC read out the same scam warning as for the second payment. Mr S said *“yes, accepted (that the loss wouldn’t be HSBC’s)...I’m fine...yes OK, please release the payment”*.

2 September 2022 – £44,238.31: HSBC called Mr S. The questions and Mr S’ answers were similar, but I quote some here.

HSBC: *“why are you making the payment?”* Mr S: *“Investment...markets”*.

How did you find out about B?"...Mr S:"Online, everything done by me...no third party involved here."

Who opened the account, you or third party?" ...Mr S: "Me".

How have you researched crypto investments?".... Mr S: "Online, but a fair bit of research...it's all straightforward..."

Why invest in crypto?"....Mr S: "Higher returns".

What proof do you have it is legitimate?"....Mr S: "all online, I can see my funds in my wallet".

Any calls from third parties?"....Mr S: "No".

Did anyone advise or instruct you to make the payments (twice)?"...Mr S: "No" (twice).

"How did you get the account details?" ...Mr S: "emails".

"Emails can be intercepted...(repeats question)...Mr S: "they are genuine emails, I've done the research".

Have you sought independent advice" ...Mr S: "No".

Are you confident to go ahead?"...Mr S: "yes, absolutely".

HSBC then read out the scam warning as for the other two calls. Mr S said *"Yes, I understand, I take responsibility"...I don't need any more time on this, please release the payment..."*.

Mr S also said, *"it is possible there will be further payments, please release it."*

I've considered the questions put by HSBC and Mr S' answers. I'm satisfied that HSBC did ask proportionate and relevant questions. And addressing the further points made by Mr S – he did state each time he hadn't been advised by a third party; he was confident that he had done a lot of his own research; and he said he had obtained the payment details himself and not from a third party. I also noted from the tone of Mr S' responses – that he was confident that he was doing the right thing, and in fact he became frustrated by HSBC's questions. He said he knew what he was doing.

Therefore, HSBC acted reasonably regarding the second, third and fourth payments.

Payments - £50,000, £43,919.75: I went on to consider the fifth and sixth payments. These weren't identified by HSBC as needing a call with Mr S – as the payments were following the same pattern as before. So I need to consider what would've likely happened had HSBC called Mr S about them. And I think it's more likely than not he would've gone ahead. I say that because:

- he was very confident in his responses in the three calls I've described. So - it's likely his responses would've been the same.

- he said in the earlier calls that HSBC's questions, and answers, were the same – and was frustrated. I think it's likely the same thing would've played out again.

- He referred in the earlier calls to making further investments of the same type – so it was his plan to do so.

- I saw the messages between himself and A. It's clear he was completely under her spell by that time. In the messages, I could see that on 5 September 2022, in response to A's message about a further investment, Mr S said he was looking forward to it.

So – I'm persuaded that Mr S would've gone ahead and made the final two payments, even if HSBC had called him about them.

Therefore, I think HSBC acted reasonably and I don't consider they should refund any of the money to Mr S.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost funds. I can see HSBC contacted the bank on 12 September 2022 – the day that Mr S reported the scam. So – that was reasonable. Unfortunately, it's the case that where an overseas bank is involved, the chances of recovery are lower than for a UK bank. And here, a small amount was refunded, but after that, the bank concerned said there were no other funds to send back.

I'm sorry Mr S has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold HSBC responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 September 2023.

Martin Lord
Ombudsman