

The complaint

Mr and Mrs H are unhappy that HSBC UK Bank Plc, trading as first direct, will not refund the money they lost as the result of an authorised push payment (APP) scam.

They have brought their complaint through a representative. For ease of reading I will refer solely to Mr H in this decision as he made the payment from their joint account.

What happened

As both parties are familiar with the details of the complaint I will not repeat them in full here. In summary, on 30 June 2023 Mr H made a payment of £12,000 to a cryptocurrency account in his name. From there he moved the money on to the scammer. He had responded to an advert online and believed he was investing in cryptocurrency. He realised he had been scammed when he tried to withdraw his returns and was told to first deposit more money.

Mr H says HSBC failed to intervene effectively and had it done so it could have prevented his loss.

HSBC says it was not the point of loss and Mr H would need to contact the provider of his crypto account.

Our investigator did not uphold Mr H's complaint. She said whilst HSBC had intervened it ought to have probed further. However, she did not think this would have changed the outcome based on how the available evidence indicated Mr H would most likely have responded.

Mr H disagreed and asked for an ombudsman's review. He said it was not a fair assertion that he had been coached by the scammer to such an extent that HSBC could not have broken the spell had it intervened effectively.

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.

There's no dispute that Mr H made and authorised the payment. Mr H knew why he was making the payment. At the stage he was making this payment, he believed he was moving money to his new crypto account so he could start investing. I don't dispute the investment opportunity that was sold to Mr H was a scam, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mr H's instructions. So in the first instance Mr H 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 I consider to have been good industry practice at the time. To note, as the payment was made to another account in Mr H's name (rather than

another person within the UK) the Contingent Reimbursement Model (CRM) code and its principles 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 do not find HSBC can be fairly held liable for Mr and Mrs H's loss. I'll explain why.

The payment was detected as out of character and this triggered an intervention from HSBC. I have listened to the call between the parties. HSBC asked for the reason, whether it was a new contact, and how Mr H had got the bank details. Mr H explained he was moving a lot of money around at that time to get better interest rates and this payment was for an investment. He confirmed he'd had dealings with the same people before and their bank details were obtained using a verified telephone number. HSBC read a scam warning during the call – though I do find this was done at such a pace that it was hard to follow.

Overall, I think the right questions were not asked during the intervention call. The bank did not probe as to the source of the investment or the expected returns, for example. I don't think it properly established the basic context of the payment. Had it tried to do so however I think the payment would still have been processed. I accept there were a number of red flags that could have emerged (the online advert carried a celebrity endorsement, the likely returns were unknown, there had been an initial test withdrawal and Mr H had allowed remote access software to be used) but, on balance, I think it's most likely Mr H would not have been open and transparent in his responses to proportionate questioning.

In his testimony Mr H told us he did not know he was being scammed and so answered any questions honestly. But this is not an accurate recollection of the call. I find his answers to the questions that were asked misled the bank. And based on how he responded to questions another firm asked just days before (relating to the same scam) I think it's fair to conclude he would have replied to HSBC in the same way had it probed further, thus preventing it from accurately assessing the risk of financial harm. I note Mr H had also deferred to the scammer for guidance on how to manage banks' questions. I find he was under the spell of the scam to the extent that he would have proceeded even if HSBC's intervention was more complete.

I think this is a fair finding as he was told by another business just days before that this was most likely a scam yet opted to continue. Mr H argues it is not reasonable to assume he would have replied to HSBC as he did other firms, but I disagree. That is evidence from the time of the scam as to his approach and stated of mind in relation to the scam. There is not evidence to show he had any suspicions or concerns.

I have then considered if HSBC did what it should to try to recover Mr H's money once he reported the scam. As he had made the payment to an account in his name and moved it on

from there I cannot see there was any reasonable prospect of HSBC successfully recovering the funds. But nonetheless I can see it contacted the recipient account provider in a timely manner.

This means I am not instructing HSBC to refund any money to Mr and Mrs H. This is a difficult decision to make, I'm sorry they lost a considerable amount of money which was very distressing. I can understand why they would like to be compensated for their loss. And I do accept Mr H 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.

My final decision

I am not upholding Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 15 February 2024.

Rebecca Connelley
Ombudsman