

## The complaint

Mr M complains that HSBC UK Bank Plc (HSBC) hasn't refunded him the full amount he lost to a cryptocurrency-based scam.

Mr M brings his complaint through a Claims Management Company (CMC). For clarity in what follows I will refer to Mr M even where the relevant submissions were made on his behalf.

## What happened

The details and facts of this case are well-known to both parties, so I will not repeat them at length here. But in summary, between August 2021 and March 2022, Mr M sent a series of payments from an account he holds with HSBC to fund what he believed to be a genuine investment with a trading firm (which I'll refer to as W). In total these payments amounted to an overall sum of just under £1m.

Mr M had found W advertised online and, having spoken to someone claiming to be a representative, he thought W seemed a good investment opportunity. Mr M was told that to fund a trading account with W he'd need to send cryptocurrency. To this end, he was helped by W to set up an electronic wallet with a legitimate cryptocurrency exchange (C).

Mr M would then transfer money from his bank to this wallet, which would be used to purchase cryptocurrency - to send onwards to the supposed trading account with W.

Initially Mr M received some relatively small sums back in return, which he was led to believe represented his trading profits. The investment appeared (on W's website) to be performing as expected. But in 2022 he was told by W that his funds had been lost. Mr M suspected this might have been a scam.

When HSBC later proactively contacted Mr M, he and the bank identified that this had indeed been an Authorised Push Payment scam (APP scam). HSBC said it would look into what had happened. Because the money Mr M had sent to C had been utilised in the purchase of cryptocurrency that was then routed to W, no funds remained with C to be recovered.

But HSBC said it would reimburse Mr M for the majority of the money he'd lost. It repaid Mr M the value of the payments he'd made to C on or after 23 August 2021, net of the sums he'd received back. It paid Mr M a further £150 in recognition of the time it had taken to conclude its investigations.

However, HSBC didn't accept it was liable to reimburse the first three payments Mr M had made to C, amounting to a total of £7,010. The disputed payments were as follows:

Date	Type of Transaction	Amount
12/08/2021	Faster Payments transfer to C	£10
13/08/2021	Faster Payments transfer to C	£5,000

20/08/2021	Card Payment to C	£2,000
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Mr M didn't accept this outcome. He believes HSBC should reimburse the whole loss including the first three payments and additionally, pay the costs of his representation by the CMC he was using.

Our Investigator reviewed everything afresh. She didn't think HSBC could reasonably be held liable for the first three payments. Amongst other points, she noted that HSBC had intervened before processing the payment on 13 August for the sum of £5,000. It had spoken to Mr M about the payment and provided scam warning information. But Mr M had been insistent on making the payment regardless.

In the absence of evidence to the contrary she thought a similar discussion and outcome have would likely have resulted had HSBC intervened before permitting Mr M's card payment on 20 August. Overall, the Investigator didn't think HSBC could reasonably have prevented the relevant losses, and she didn't hold the bank responsible for refunding these three payments.

The Investigator didn't agree that HSBC should be liable for the costs Mr M had incurred by choosing to use a CMC to represent him. She said Mr M could have referred the matter to this service without using a CMC.

Mr M didn't accept the Investigator's findings. He said that HSBC was liable for the full loss amount due to negligence on the bank's part. He said it wasn't until he'd instructed the CMC that HSBC took note of his complaints. He said that in some circumstances the Financial Ombudsman Service could award costs of this nature, where for example a consumer lacked the capacity to represent themselves.

In light of this disagreement, I have been asked to make a final decision on Mr M's complaint.

### **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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

I'm sorry to hear about what happened to Mr M. He's lost a considerable sum to this scam, and while the vast majority of what he lost has since been refunded to him by HSBC, this has not accounted for every payment. And there has been the non-financial impact of the scam on him too.

What remains to be decided here is whether HSBC should fairly be held liable to reimburse the first three payments, and whether it should be liable for Mr M's costs (or any other sums are fairly due to him).

Of course, while I have natural sympathy for Mr M in what happened, I have to recognise that the principal cause of his losses here were the actions of the scammers who deceived him. Similarly, the non-financial impact of the scam is principally the result of the scammers actions.

I must also take into account that HSBC has a primary duty to carry out the payment instructions its customers give it. As a starting point in law, a customer is therefore assumed liable for payments they have instructed to be made.

A voluntary code does exist to provide additional protection against APP scams (the Contingent Reimbursement Model Code – CRM Code). Santander is a signatory to that voluntary code. But payments made to a customer's own accounts won't normally be covered by the CRM Code.

That matters because Mr M sent money from his HSBC account to an electronic wallet registered in his own name at C. He'd set this up (albeit with the assistance of W) and knew it was being used as a route to move his funds to W. Based on what I have seen, I find that the CRM Code provisions don't apply to Mr M's complaint about HSBC.

However, there are other considerations that can apply in cases such as this. In particular, I consider that as a matter of good industry practice HSBC should have been looking out for payments that were significantly out of character or unusual and which might therefore be indicative of the potential for financial detriment to its customer through fraud or a scam.

In such circumstances, I'd expect a bank to make a proportionate intervention, prior to processing the payment, to assure itself that the payment isn't part of a fraud or scam. I've considered whether HSBC did enough in relation to the three payments for which it disputes liability.

The first payment of £10 was not a remarkable sum in the context of Mr M's typical account usage. All taken into account, I do not consider HSBC reasonably ought to have had concerns about this payment, and there was no reason for the bank not to comply with its primary obligation to process that payment without delay.

However, HSBC did identify concerns at the point of payment two. This was for the sum of £5,000. The bank spoke to Mr M prior to releasing the payment and I have listened to the relevant call recordings.

Throughout, while the line quality is variable, it seems to me that Mr M answers confidently and without any signs of confusion about what he's asking the bank to do. But he does question why he is being asked about this payment, and at points he objects that some of the information being requested is intrusive.

When HSBC explains that it is attempting to protect him against fraud and scams, Mr M asserts that he knows where is sending the money and that it is a legitimate destination. He says he doesn't need to answer any questions about the payment and that he expects HSBC to follow his instructions and make the payment to C.

Mr M then explains he is trading cryptocurrency on C and that is the purpose of the payment. When HSBC questions further, asking how long Mr M had been trading, Mr M objects, refusing to answer such an intrusive question. He notes that the bank needs to be assured he wants to make the transfer and he is providing that assurance. HSBC doesn't release the payment at this point, but arranges that Mr M will be called by a specialist fraud team member to discuss the payment further.

In the follow-up call, Mr M is insistent that he wants the payment to be made. He confirms that he understands the bank is trying to protect him. Knowing that, he still wants to proceed with the payment. He reiterates that he has been trading on C. He explained he'd already made previous payments to C from another source. He was satisfied C was legitimate.

Mr M explains he trades elsewhere and has done so for some time, a fact known to the bank. He notes that yesterday, he'd carried out a trade in shares for a significantly larger sum without encountering any questioning. Trading was something he normally did. He repeats he'd opened the account with C himself. HSBC asks if anyone helped him with this or called him about the investment arrangements – to which Mr M replies that he hadn't had any calls from anyone else or been asked to make the payment. He says he understands the bank's concerns but says HSBC needn't be concerned – in short, he is quite happy the transaction is genuine and wants to make the payment.

Relevant here, over the course of these calls, Mr M is consistent in stating he is trading on C and that C is a legitimate firm. He does not tell HSBC that in fact he is trading on W, or that representative of W is helping him to do so. Had Mr M done so, it seems quite likely to me that HSBC would have quickly identified that W was the subject of a live FCA warning (which had been logged against W some months earlier).

It is unclear to me why Mr M didn't disclose any information about W's role here, given this would have been the natural response to some of HSBC's questions over both calls (such as when he was asked about any help he'd received). But regardless, having reviewed the content of these calls, I'm satisfied that HSBC explained to Mr M why it had concerns about the payment he was making, and that Mr M was nonetheless insistent on proceeding.

Thinking about what would have been proportionate in these specific circumstances, I do not find HSBC needed to more. And I do not find it was at fault in carrying out Mr M's instructions to make this payment, taking account of its discussions with him and the responses he had given.

Mr M requested a further payment a few days later. Again, HSBC blocked the payment until it could discuss this with Mr M. It asked him again about the transaction. Mr M reiterated in response to the bank's questions that he was sending the funds to his own account at C, that he had opened this account himself, and said no-one had helped or told him to do this. He said no-one was helping him with the trading – he was doing this himself.

The representative explained to Mr M that scam websites can appear extremely convincing and detailed common features of scams such as the payment of small credits to persuade victims to make larger investments. It was agreed that his account would be unblocked with the payment returned to his account, with Mr M agreeing not to make any further payments until he was satisfied the investment was legitimate. However, as before, he didn't disclose that he was being helped in this investment, or mention W's involvement.

Once again, I am satisfied that HSBC took appropriate and proportionate steps to inform Mr M of the relevant risks. Again, Mr M's answers do not appear to entirely correspond to what was actually taking place, but he answered confidently and there was no obvious sign that what he was saying wasn't anything other than accurate and honest.

While HSBC doesn't appear to have intervened when Mr M made the £2,000 card payment, even if it had done so I am not persuaded a proportionate intervention would have led Mr M not to proceed – based on what I've seen on the previous calls, I think Mr M would have still made the payment regardless. Nothing I have seen here leads me to conclude otherwise.

And for the avoidance of doubt, I do not consider there would have been any realistic prospects of pursuing a successful chargeback attempt. I say this given that the merchant in question, C, was a legitimate cryptocurrency exchange and appears to have provided what Mr M paid for with this card payment – that being the corresponding credit to his electronic wallet.

In summary then, I don't find HSBC could have reasonably prevented Mr M from making these first three payments or is otherwise liable. I cannot fairly require it to reimburse him for these sums.

Turning to Mr M's request for the payment of his CMC's costs in recognition of poor service by HSBC, I don't find that would be fair in the circumstances of this complaint.

In relation to this complaint, I'm not persuaded by the evidence available to me that Mr M lacked the capacity to represent himself, as has been implied. And I can see Mr M has separately been in contact with this service to both refer, and then to deal with, two other complaints about banks. The contact on those complaints falls either side of the referral of Mr M's current complaint. Based on everything I have seen I am not persuaded that Mr M could only have made his current complaint, or have referred his complaint to this service, with the assistance of the CMC he used. Rather, I find this was a matter of choice.

While HSBC did not provide an outcome immediately, the evidence provided does show that it logged Mr M's claim following its own proactive intervention and started to investigate. I do not think the time taken was wholly unreasonable given the relative complexity of the claim - including the overall size of Mr M's claim and the volume of transactions involved. I think the compensation HSBC paid Mr M was appropriate in the circumstances.

Nothing I have seen leads me to think the involvement of the CMC altered the outcome reached or the time taken. As I have found the use of a professional representative was Mr M's choice here rather than a necessity, I do not consider it would be fair to require HSBC to cover the associated costs.

For completeness, I have considered whether it might be fair and reasonable to require HSBC to make any additional payments to Mr M beyond those it already has. But I am not persuaded there is evidence of sufficient fault on HSBC's part to justify such an additional award. I do not require HSBC to take any further action here.

### **My final decision**

For the reasons given above, I do not uphold Mr M's complaint about HSBC UK Bank Plc.

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

Stephen Dickie  
**Ombudsman**