

## **The complaint**

Mr M complains that HSBC Bank UK Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr M was invited to join a telegram group which was run by someone claiming to be affiliated with a financial website. The broker advised the group to invest in cryptocurrency using a platform I'll refer to as "G", describing the investment as "a top-notch new energy finance product that combines the four innovative technologies of Natural Gas + Web 3.0 + Blockchain + Metaverse".

Mr M was sent a 'white paper' which outlined the investment opportunity and after careful consideration he decided to invest. Between 29 November 2022 and 13 December 2022, he made four payments to an account he held with a cryptocurrency exchange company totalling £7,810 via online transfer from his HSBC account. The funds were then moved from there to an online wallet, which he could monitor on G's trading platform.

On 5 March 2023, Mr M tried to check on his investment and found it had been deleted, that G's platform was no longer available and all the chat history on the telegram had been deleted. At this point he realised he was the victim of an investment scam and complained to HSBC, but it said the scam occurred when the money was moved from the cryptocurrency exchange, so it couldn't provide a refund. It said Mr M should raise a complaint with the cryptocurrency exchange company.

Mr M wasn't satisfied and so he complained to this service with the assistance of a representative who explained Mr M had been susceptible to fraud because he was dealing with financial stress, and HSBC had failed to identify him as a vulnerable customer. They said others on the telegram chat group had endorsed the investment, and Mr M had considered the white paper provided, which looked very professional. He noted there was no minimum investment, and he googled the investment and didn't find anything concerning. He was satisfied the onboarding was professional and he thought the number of likes, comments and positive reactions from the telegram group made it seem genuine.

The representative said Mr M had no previous experience of investing in cryptocurrency, so the new and large transactions to a high-risk merchant were unusual, and there was movement of money into and then out of the account immediately after the payments, which should have flagged as suspicious. They said HSBC had an obligation to stop and question out of character payments and that Mr M was asked whether he was paying known payee, whether he was aware of the risk involved in cryptocurrency and whether someone had forced him to make the payment, but the intervention wasn't enough.

They said HSBC could have asked more questions and done more to spot the red flags, which included the fact Mr M was contacted on social media, he was told the return would be over 100%, he was taking advice from a third-party and G wasn't authorised by the Financial Conduct Authority ("FCA").

HSBC accepted Mr M was the victim of a scam, but it said money wasn't lost until it was moved from the cryptocurrency exchange, so it wasn't liable to refund the money he'd lost. Our investigator didn't think the complaint should be upheld. He explained the third payment was blocked and he was satisfied HSBC had done enough during the calls, noting Mr M was advised to research the opportunity before calling back to make the payment. And he was satisfied Mr M understood that if the investment was a scam he could lose his money, yet he still wanted to go ahead with the payment, so it wouldn't have made any difference to the outcome if HSBC had intervened any sooner.

Mr M has asked the complaint to be reviewed by an Ombudsman. His representative said he wasn't told why he needed to research the investment and what sort of research would be appropriate, describing him as an ordinary person who didn't know what sort of research was appropriate. They further argued HSBC could have identified this was a scam based on the fact Mr M was told to send money through a cryptocurrency exchange, he found the investment on social media, and he was promised a 100% return on his investment.

They said a generic warning about risks wasn't sufficient and HSBC should have warned him the investment matched known fraud types. They maintain that if HSBC had intervened with proper questioning and warnings, the scam would have been exposed and Mr M wouldn't have gone ahead with the payments.

### **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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr M has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

I'm satisfied Mr M 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr M is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded this was a scam. But, although Mr M didn't intend his money to go to scammers, he did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may

sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I've thought about whether HSBC could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have done more to warn Mr M when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Mr M from financial harm due to fraud.

The third payment flagged as suspicious on HSBC's systems. I've considered the nature of the first two payments in the context of whether they were unusual or uncharacteristic of how Mr M normally ran his account, and I don't think they were. Both payments were to a legitimate cryptocurrency exchange company, and neither were for particularly large amounts. So, I don't think HSBC needed to intervene any sooner than it did.

HSBC flagged the third payment and questioned Mr M around the purpose of the payment. He was told to do more checks, including checking FCA and Companies House registers and to look for any negative reviews online which might suggest the payee was operating as a scam. Mr M did this and when he called back, he said he was satisfied the investment was genuine, he had no concerns, and he knew what he was doing.

Before the payment was released, Mr M was asked whether anyone had told him to lie and given a generic scam warning. He said he didn't need to do more checks, he was satisfied the previous payments had been received and he'd checked on Companies House that the payee was registered in the UK. He was asked if he'd sought independent advice and he said he had an advisor who he'd known for three or four months and who he trusted. The call handler didn't explore this, but she did ask if he'd been asked to make the payment by a third-party.

On 13 December 2022, HSBC flagged a further payment of £4,800 and during the subsequent call, he was asked if previous payments were reflected in his cryptocurrency wallet, and whether anyone else had access to the wallet. He was also asked whether he'd been asked to make the payment by a third-party and whether he'd been told to lie in response to its questions.

Having carefully considered the circumstances, I'm satisfied that HSBC intervened at the point I would expect and, having listened to the calls, I'm satisfied it asked robust questions around the purpose of the payments. During the second call, Mr M said that someone was advising him, but the call handler didn't press him on who this was or how he met them, so I think it could have done more to explore the issue of third-party involvement.

However, I've thought about what might have happened had the call handler asked more questions and, on balance, I think it's unlikely Mr M would have disclosed the existence of the broker and the telegram group, because he'd chosen not to mention them up to that point. And even if he was open about the existence of the third-party, I don't think it would have made a difference to the outcome.

This is because, Mr M had already followed HSBC's advice to do more checks and there was no information available at the time to suggest the broker was operating a scam. And it's clear he was convinced the investment was genuine and was impressed with the positive endorsements from others on the telegram group, so even if HSBC had been clearer about

the fact there were red flags present, I think it's more likely than not that he'd have gone ahead with the investment. Therefore, while I think HSBC could have done more during the calls, I don't think this represented a missed opportunity to intervene in circumstances which would have prevented his loss.

I'm sorry to hear Mr M has lost money and the effect this has had on him. But for the reasons I've explained, I don't think HSBC could have done anything to prevent this and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2023.

Carolyn Bonnell  
**Ombudsman**