

The complaint

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

What happened

What Mr S says:

Mr S said he was the victim of a previous investment scam – whereby he made payments to a scammer and lost money. He was then approached by another person who claimed to be able to recover his money – for a fee. Mr S paid the fee of £4,383.51 on 2 December 2021. But – that contact also proved to be a scammer and Mr S lost the money.

The payment was:

Date	Payment	Amount
2 December 2021	Faster payment (USD5,625) - international	£4,383.51
2 December 2021	Fee	£5
Total loss		£4,388.51

Mr S complained to HSBC in June 2023. He said the transaction was unusual and HSBC should've done more to protect him. HSBC should've warned him about the potential for the payment to be a scam – and the money should be reimbursed under the Contingency Reimbursement Model Code (CRM Code).

He says HSBC should refund the money and add interest at 8% per annum; and remove any adverse markers on his credit file.

What HSBC said:

HSBC said that the payment wasn't covered by the Contingency Reimbursement Model Code (CRM Code) – as it was an international payment. In December 2021, they'd tried to recover the money from the recipient bank, but without success.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it. He said the payment wasn't unusual compared to the normal activity on Mr S' account. And customers could sometimes be expected to make slightly larger payments. HSBC had tried to recover the money but had no success.

Mr S didn't agree and asked that an ombudsman look at his complaint. 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 scam. It's not in question that he authorised and consented to the payment 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.

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

Mr S has argued that the payment should be refunded under the Contingent Reimbursement Model Code (CRM Code). But I'm afraid to say that doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary– and in this case, the payments were made to an overseas account.

I considered whether this was a payment that HSBC might reasonably have considered unusual, and therefore whether they should've held or stopped the payment and contacted Mr S about it. I looked at Mr S's account, and it's fair to say that he generally used it for day-to-day expenses and income. Payments were mostly below £1,000.

As our investigator noted, there was a payment for £6,500 in July 2021 – but that was a one-off payment, and no others stood out as being large enough to conclude that Mr S used his account for regular, large payments.

But that's not the main point here – I don't think we could expect HSBC to have intervened in the payment because it was for a relatively low amount. I 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. In this case, I think HSBC acted reasonably in processing the payments.

I did note that when Mr S made the payment, HSBC sent a 'pop up' on screen message to Mr S which said, *"Scam Alert...this payment has been flagged as higher risk"* and a second pop up said, *"Take care when sending money online...take time to speak to someone you trust. Then check the company is genuine...before making any payment. We may not be able to recover payments that turn out to be fraudulent"*.

Mr S clicked to continue with the payment.

So, on balance, taking all this into account, I can't in all fairness hold HSBC as liable for the payment.

Mr S has said that any adverse markers on his credit file should be removed. I can't ask HSBC to do that, as I don't conclude that HSBC made any errors in making the payment.

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 money.

I can see that Mr S contacted HSBC in December 2021 and HSBC then contacted the recipient bank. In cases of payments to an overseas account – the foreign bank concerned has to get the authority of the payee to release the funds. And in February 2022, that bank responded that they'd contacted the beneficiary of the payment – to get such an authority - but they'd not agreed to do so. So – no money could be refunded.

I'm satisfied that HSBC did what they could here.

I'm sorry Mr S has had to contact us in these circumstances, especially as he's said he lost money in a previous scam. I accept he's been the victim of a cruel scam, but I can't reasonably hold HSBC responsible for his loss. **(continued)**

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 14 November 2023.

Martin Lord
Ombudsman