

## The complaint

Mr S complains that HSBC UK Bank Plc won't refund money he lost when he was the victim of a scam.

Mr S is represented by a firm that I'll refer to as 'C'.

## What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2017 and 2018 Mr S was the victim of an investment scam in which he lost about £11,000. He found the scam firm – which I'll refer to as 'K' – online and, after reading positive reviews, left his details to be contacted. K called Mr S and convinced him to invest a small amount to begin with which, after seeing positive interest returns, led him to feel reassured and willing to invest more.

The relevant payments are:

Date	Type	Amount
11 December 2017	International payment	£250
13 December 2017	International payment	£999
13 December 2017	International payment	£1,000
7 March 2018	International payment	£5,000
8 March 2018	International payment	£5,000
<b>Total:</b>		<b>£12,249</b>

Mr S received £1,000 from K which credited his account – in equal £500 amounts - on 1 and 19 March 2018, making his loss £11,149. Mr S became aware he'd been scammed after seeing his trading account drop rapidly in value and when his attempts to speak with K were ignored.

C complained to HSBC in November 2022, on behalf of Mr S, about the two £5,000 transactions. In short, they said:

- Although Mr S authorised the transactions, he did so under false belief and HSBC should've intervened before processing them.
- HSBC failed in their duty of care to protect Mr S from the scam. Mr S hadn't invested prior to the scam and, given he'd been a customer for 20 years prior, HSBC ought to have identified the change in his spending habits. Had they done so and contacted Mr S to ask probing questions, they would've become aware he was falling victim to a scam.
- Upon being appropriately warned of the risks, Mr S wouldn't have gone ahead with the transactions. HSBC's failure to take this action resulted in Mr S being the victim of the scam.

- To settle this complaint, Mr S wants the reimbursement of the money he lost.

HSBC didn't uphold the complaint. They explained they initially stopped the first £5,000 transaction as they were unable to confirm it was genuine. And that they spoke with Mr S who confirmed it was genuine and agreed for it to be sent – so the payment was released. HSBC added that the payments weren't covered by the Contingent Reimbursement Model (CRM) code as it didn't come into effect until May 2019, nor did it apply to overseas payments.

The complaint was referred to the Financial Ombudsman but our Investigator didn't think HSBC has to do anything further. He said:

- Although C only referred to the two £5,000 payments in their complaint to HSBC, Mr S has confirmed the December 2017 payments ought to be included here.
- He noted there was some confusion around why there were two £5,000 payments as C referred to Mr S only processing one. He explained there'd been an error by HSBC processing a £5,000 payment that Mr S requested to be cancelled due to it being sent in the wrong currency. HSBC did however offer to recover the payment but Mr S declined as he wanted the money to remain with the payee so he didn't lose out on the investment. A complaint was logged about this at the time and HSBC issued a final response on 19 April 2018 – in which they paid £200 compensation.
- He listened to calls between Mr S and HSBC at the time of the March 2018 payments and, while he thinks HSBC could've been more thorough in their questioning, he thought it was most likely Mr S would've still gone ahead even if that happened. This was because Mr S had already made several investment payments a few months earlier and received a £500 return, likely reassuring him it was genuine. So, even if HSBC had questioned Mr S about the payment further he didn't think it would've concerned Mr S as to K's, or the investments, legitimacy.
- Mr S queried why two payments had left his account at the time. But he told HSBC he was happy for it to remain there when HSBC explained their error and offered to recover it. This, he felt, demonstrated Mr S's confidence in K and the investment, which added to his view that any action HSBC had taken wouldn't have been able to change his mind.

C didn't agree with our Investigator. They thought it was irrelevant that Mr S declined HSBC's offer to recover the additional £5,000 sent as, unless they effectively attempted to uncover the scam, any customer would be happy to have the funds remain until they realise they're at risk. And Mr S only chose to leave the money with K due to his frustration over HSBC's improper processing of the payment – not because he wouldn't have listened to scam warnings/advice. If HSBC had told Mr S they were concerned he was at risk of being scammed and asked whether he remained sure he didn't want it to be recovered, to which he then declined, then the Investigator's assumption Mr S wouldn't have been receptive to scam advice would be fair.

C also added that providing an investment return is a common tactic used by scammers. And there's nothing to suggest Mr S wouldn't have realised he was being scammed had HSBC asked probing questions followed by effective scam advice.

Before I go on to explain the reasons for my decision, I'd like to clarify that I'm only considering whether HSBC are responsible for the loss Mr S suffered due to the scam. I won't be looking at HSBC's error in sending the £5,000 payment Mr S requested to be cancelled as part of this 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 Mr S has been the victim of a scam and I don't underestimate the impact it's had on him. But I must consider whether HSBC is responsible for his loss. And while I know it won't be the outcome Mr S is hoping for, I don't think they are and for similar reasons as to our Investigator. I'll explain why.

I've thought about the CRM code which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams like this one. But, as HSBC explained, the CRM code didn't come into effect until 28 May 2019 and doesn't apply retrospectively. It also only applies to payments made between UK bank accounts. As the payments in question here were sent overseas and before the CRM code came into effect, they're not covered.

I've therefore considered whether HSBC should reimburse Mr S under any of their other obligations. And taking into account regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr S to HSBC (either individually or collectively) were unusual in relation to his typical account activity.

Having reviewed Mr S's account statements prior to the scam payments, it was typically used for day to day spending along with various transactions made between £2,500 and £5,000 in value. Because of this, I don't think the first three payments were unusual in relation to Mr S's typical account activity. So, I don't think HSBC had reason to consider these payments as suspicious, thereby prompting them to intervene before processing them.

Mr S then made a £5,000 payment in March 2018, which was significantly more than the previous amounts he sent relating to the scam. I don't think this payment was particularly out of character for Mr S given he'd made various transactions between £2,500 and £5,000 in the prior 12 months, and as he'd also made international payments previously. Nevertheless, I'm aware that following Mr S contacting HSBC to cancel the payment, this led to another payment being processed – which also led to two payments being sent because of an HSBC error. From this, HSBC contacted Mr S to ensure the payment was genuine. As HSBC spoke with Mr S about the payment(s) they had an opportunity to identify whether he was at risk of financial harm from fraud. I've therefore considered if they did enough to prevent this and, if they didn't, whether it likely would've made a difference if they had.

Having listened to the calls, while I'm satisfied HSBC confirmed the payment was genuine, I think they could've done more to establish whether Mr S was at risk of financial harm. I think it would've been reasonable for HSBC to have enquired further about the payment – such as what the payment was for and what steps Mr S had taken to ensure K, and the investment, was legitimate. I consider it likely Mr S would've explained the payment was for investment purposes, he'd found positive reviews about K online, received a business plan setting out the investment strategy and that he'd also received a £500 return so far.

Although Mr S had received a return, the £5,000 payment he was sending – which ultimately ended up being £10,000 - was significantly more than what he'd initially invested. And, as C has pointed out, a tactic used by scammers is to provide a return to the victim with the aim of gaining their trust and inducing further funds from them. HSBC should've been familiar with investment scams and their prevalence at the time. Given this, and that Mr S was sending money overseas for investment purposes, I think it would've been reasonable for HSBC to

have recommended to Mr S that he carry out additional checks before proceeding any further.

But even if Mr S had listened to this advice, I'm not persuaded it would've deterred him from making the payment. This is because the Financial Conduct Authority's warning about K providing financial services or products in the UK without their authorisation hadn't yet been published. And from what I've seen was available at the time of the March 2018 payments, there were largely positive reviews about K on an independent online review platform. So, given Mr S had received a return from the investment to date and received investment literature (business) from K, I think it's most likely he would've remained convinced K and the investment was legitimate. And this is similarly why, albeit without a scam warning provided by HSBC, Mr S felt reassured enough to decline HSBC's offer to recover the additional £5,000 sent in error at the time. It follows that, taking all of this into consideration, I don't think I can fairly conclude HSBC is responsible for the loss Mr S suffered.

I've also considered HSBC's actions upon being told of the scam. And although, ordinarily, I would've expected HSBC to have contacted the receiving bank to try and recover the funds Mr S lost, I think it was reasonable for HSBC not to do so. This is because HSBC were made aware of the scam more than four years after the payments were made. And given the payments were sent overseas, I don't think there would've been any reasonable prospect of recovery here.

I'm sorry to hear Mr S fell victim to a scam. But in the circumstances of this complaint, I don't think HSBC has acted unfairly. So, I'm not going to tell them to do anything further.

### **My final decision**

My final decision is that 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 August 2023.

Daniel O'Dell  
**Ombudsman**