

## The complaint

Mr R via a representative complains that HSBC UK Bank Plc ("HSBC") won't refund over £50,000 he lost to a fake job scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here.

In brief, Mr R fell victim to a fake job scam after receiving a message via a messaging service - I will call the scammer 'B'. B told Mr R that he would be paid for completing a number of tasks, but he would have to send funds to B via a crypto exchange to unlock these tasks. Mr R made the following debit card payments from two accounts he held with HSBC to a crypto exchange.

Transaction Number	Date	Amount
1	1 December 2022	£2,000
2	1 December 2022	£4,525
3	5 December 2022	£3,000
4	5 December 2022	£2,790
5	8 December 2022	£5,000
6	8 December 2022	£5,000
7	8 December 2022	£2,800
8	9 December 2022	£1,750
9	19 December 2022	Credit of £83.91
10	20 December 2022	£5,000
11	20 December 2022	£5,000
12	20 December 2022	£2,440
13	16 January 2023	£424
14	17 April 2023	£35
15	17 April 2023	£4,770
16	2 May 2023	£1,497.06
17	4 May 2023	£2,663.70
18	18 May 2023	£3,937.33
19	18 May 2023	£3,351.84

Mr R initially suspected that he had been scammed on 9 December 2022 and he contacted HSBC regarding this. He was told to direct his concerns to the crypto exchange. He subsequently got back in touch with B in an attempt to recover his funds and unlock the money that he had "earned". When he was unable to he raised a complaint with HSBC.

Our investigator upheld the complaint in part. He thought that HSBC ought to have questioned Mr R about payment 6. The investigator thought, had that happened, the scam would likely have been stopped. Therefore, the investigator said that HSBC should pay 50% of the loss after this point. He said this because he thought that HSBC and C were each responsible for 50% of the loss. So, there should be a deduction of 50% in recognition of Mr

R's own contributory negligence. No agreement was reached on this and due to severe financial difficulties Mr R requested that this case be reviewed by an ombudsman.

### **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.

It isn't in dispute that Mr R has fallen victim to a scam here, nor that he authorised the disputed payments he made to B (where his funds were subsequently transferred on to the scammers). The payments were requested by him using his legitimate security credentials provided by HSBC, and the starting position is that banks ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I've considered whether HSBC should have done more to prevent Mr R from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character for that account holder.

I understand the investigator considered payment 6 ought to have been regarded as unusual, given that it was larger than the payments that Mr R usually made and was to a relatively new payee. In my view this really should have been flagged by HSBC as being unusual account activity. HSBC would have known that multiple payments being made to the same payee in relatively quick succession can often be an indication of fraudulent activity. So, I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by HSBC.

Had HSBC contacted Mr R at this point and used the opportunity to ask suitably probing questions, there is no reason to suggest he wouldn't have been forthcoming about what he was doing especially as he was forthcoming in a call that occurred around this time. If HSBC had questioned Mr R about these payments, it would have likely discovered that he had been 'contracted out' by a company offering to pay Mr R for completing tasks. But Mr R had been told that he would first have to pay for these tasks. I also think that HSBC would've discovered that Mr R had made a large amount of payments but had not received anything back despite him apparently working for B.

This is not how companies normally operate and it has all the hallmarks of a job scam. I consider there would have been reasonable grounds for suspicion here. And HSBC ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with this type of scam.

I recognise that if an intervention by HSBC had taken place, it likely would've identified that the payment was going to the consumer's own account with the crypto exchange. But I don't think the conversation should have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control.

I say this because, by the time Mr R made these payments, HSBC ought reasonably to have had a good enough understanding of how these scams worked, to have been able to identify the risk of harm occurring to its account holders from fraud. This includes the consumer often making a number of transactions in a relatively short space of time or a consumer repeatedly sending money to a platform where the money is subsequently moved on to or taken by the scammer. So, it is with this in mind that I think HSBC ought to have probed further about the nature and context of the payments Mr R was making.

In light of this, I think Mr R's losses were foreseeable to HSBC, despite the payment on the face of it not leaving his control. I'm also satisfied that, had HSBC asked relevant questions of Mr R, it would have been apparent that he was falling victim to a scam. In other words, but for HSBC's failure to make reasonable further enquiries, it would have been on notice that there was a very high chance that Mr R was going to suffer financial harm from fraud.

Had HSBC provided Mr R with a warning, it would have led Mr R to question whether he was in fact dealing with a legitimate business – especially as he had made a number of payments to B but had not received his funds in return.

I have considered whether Mr R would have carried on anyway if he had been warned by HSBC as after all he carried on despite having concerns himself. But I think a warning from his trusted bank combined with him already being concerned would have stopped him from making further payments. The result of this is that, probing questions from HSBC about the nature of the payments would have likely stopped Mr R from making any further payments.

As a result, I believe HSBC should refund the payments Mr R lost to the scam from transaction 6.

### *Contributory negligence*

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mr R should bear some responsibility by way of contributory negligence. In the circumstances, I'm satisfied he should do so in this case.

In the circumstances, I don't consider Mr R carried out sufficient due diligence to ensure that the company he was dealing with was genuine. Mr R was approached via a random message and was offered a job within a short amount of time. This is without signing a contract.

He also contributed to his own loss due to carrying on making payments despite being concerned he was being scammed also he took out a loan and did not disclosed the actual purpose of what he needed the loan for.

Therefore, I'm satisfied that Mr R's lack of due diligence and failure to question what he was being promised contributed to his loss, such that he should share responsibility with HSBC. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

### *Recovery*

I've also thought about whether HSBC could have done more to attempt to recover the payments after Mr R reported the fraud. However, the funds were forwarded on from the crypto exchange to B as part of the scam. Also, the Contingent Reimbursement Model ("CRM") does not apply to debit card payments

I also don't consider HSBC ought to have attempted a chargeback claim, as Mr R made payments to his own crypto account for the purchase of crypto and he seems to have received this before he forwarded it on to B. So, he got what he paid for.

### **Putting things right**

For the reasons given above, I uphold this complaint in part and direct HSBC Bank Ltd to:

- Refund the payments Mr R lost to the scam from and including transaction 6 onwards. Then reduce this by 50% in recognition of Mr R's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

### **My final decision**

My decision is that I uphold this complaint in part and direct HSBC UK Bank Plc to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 April 2024.

Charlie Newton  
**Ombudsman**