

The complaint

Mr B complains that HSBC UK Bank Plc (HSBC) won't refund money he lost in an investment scam.

What happened

What Mr B says:

Mr B was looking for an investment opportunity and came across the website of a bitcoin investment company. He says he made checks on the company to ensure they were legitimate. They got favourable reviews (80%) on Trustpilot and he was persuaded he should invest.

He was called by an advisor and they got access to his computer – the adviser made the payments. The first payment of £10,000 (to another bank – from which he then made payments to the bitcoin company) was stopped by HSBC and he was asked to visit a branch to discuss it. He answered all questions truthfully and advised HSBC of the name of the bitcoin firm. He said that if the intervention was thorough and the right questions were asked, he would not have gone through with the first, or subsequent payments. He said the payments were consistent with a known fraud trend.

Mr B then made payments to his crypto wallet from his HSBC account as shown:

Date	Transaction	Amount
2 November 2022	Faster payment to crypto wallet	£149.42
2 November 2022	Faster payment to crypto wallet	£298.66
29 November 2022	Faster payment to crypto wallet	£5,611.55
Total Loss		£6,059.63

Further payments were made from another account (which is the subject of another complaint to this service). Mr B then asked to withdraw some money. The company said he had to pay taxes and fees. He then realised he had been scammed and reported it to HSBC on 16 December 2022.

Mr B says a warning about the bitcoin company only appeared on the Financial Conduct Authority's website on 16 December 2022, so he couldn't have known about it. He said HSBC should've done more to protect him – he told HSBC the name of the company when he discussed the first payment. HSBC should then have known about it and warned him, but didn't. He says the payments were out of character with the way he used his account – as it was to a high-risk investment. He said he is a pensioner, was not an expert in cryptocurrency investments and was searching for a reputable company to invest with.

He says HSBC should refund the money he's lost, plus interest at 8% per annum.

What HSBC said:

HSBC didn't refund the money. They said the Contingent Reimbursement Model (CRM) Code didn't apply – as the transfers were 'me to me' – to Mr B's account. The payments had been made and authorised by Mr B. When Mr B called HSBC from its branch on 27 October 2022, he told HSBC he had been doing his research for over a year, he was following his friend's advice, and had done all his checks on the company, including checking the FCA's website. HSBC gave him all the necessary warnings on the call, but he wished to proceed.

HSBC said that on a call with Mr B on 6 January 2023, he said he'd given the third-party access to his computer.

Our investigation so far:

Mr B brought his complaint to us. Our investigator didn't uphold it. He said:

- The payments for £149.42 and £298.86 weren't flagged as suspicious as they were low value.
- The payment of £5,611.55 also wasn't considered suspicious as it was consistent with the normal activity on Mr B's account. He said there were other large payments of £195,595 (4 July 2022); £191,063.50 (6 July 2022); £6,753 (12 August 2022); £10,000 (27 October 2022).
- When Mr B visited the branch of HSBC on 27 October 2022, he was asked all the right questions. Mr B confirmed he'd done due diligence, had been investing for over 20 years and wished to go ahead with the payment. So - even if HSBC had intervened in the three payments in question, our investigator said Mr B would've likely gone ahead anyway.

Mr B asked that an ombudsman look at his complaint, and 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 B has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr B 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary— and in this case, the payments were made to Mrs B's own account – his crypto wallet.

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

The important matter here is whether these were payments that HSBC might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr B about them.

I looked at Miss B's account history with HSBC. And I don't think the payments were unusual for him. For example, there were large payments made in the previous few months such as: £195,595 (4 July 2022); £191,063.50 (6 July 2022); £6,753 (12 August 2022); £10,000 (27 October 2022). So – in this case, I don't consider HSBC could reasonably have been expected to hold the payments and ask Mr B about them.

I'm mindful also that 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.

Call - 27 October 2022: I went on to consider what might have happened had HSBC intervened in the larger payment of £5,611.55. I listened to the call between Mr B and HSBC— which was about the payment to another bank for £10,000. The money was then to be moved into Mr B's crypto wallet. HSBC had already not processed the payment the previous day – because of their concerns about it.

I'm satisfied that HSBC asked all the necessary, open questions about the payment and investment Mr B was making. The questions and answers about the payment lasted just over 20 minutes. Mr B's replies were positive - that he wanted to go ahead. I quote some parts of the call:

HSBC: *Do you still want to proceed with this payment sir?* Mr B: yes I do.

HSBC: *Why are you making the payment?* Mr B: for investment purposes – crypto.

HSBC: *How long have you been investing in crypto?* Mr B: only a short while, four weeks.

HSBC: *Is this a one off or will there be more?* Mr B: one off.

HSBC: *were you promised higher than normal returns?* Mr B: yes, but not significantly more than normal.

HSBC: *How did you find the bitcoin company?* Mr B: have investigated it (crypto investments) for over a year, have friends who've used it, done background checks on it, I'm fully aware of the scams that are going on.

HSBC: *Do you know crypto investments are high risk?* Mr B: yes, I've dealt in stocks and shares for 20 years. So I'm fully aware.

HSBC: *What research have you done?* Mr B: I have friends who've used them and I've been investing for over 20 years.

HSBC: *Did you look at the FCA's website?* Mr B: yes, I'm happy to proceed.

HSBC: *Is the online wallet in your name and only you can access it?* Mr B: yes.

HSBC: *How did you get bank details?* Mr B: I did it.

HSBC: *Did the bank and payee details match (when setting up the payment)?* Mr B: yes.

HSBC: *Did you see our online fraud alert?* Mr B: yes.

HSBC: *What response did you give 'why are you making this payment?'* Mr B: making an investment.

HSBC: *But you put 'other' – why?* Mr B: Just release the funds, I'm getting fed up with all this, you're dragging it out, you've asked me enough questions, I want to go through with this payment.

HSBC then read out (twice) the scam warning – that if the scheme turns out to be fraudulent, they may not be able to get Mr B's money back.

Mr B said: *I'm happy, understood.* Mr B agreed the payment should be sent, and HSBC's call handler released it.

Call - 26 October 2022: I also listened to the call between Mr B and HSBC the previous day. The questions and Mr B's replies were very similar, and HSBC declined to make the payment. Mr B then said "*this is ridiculous, it's my money, I'm entitled to do what I like with it. If this isn't transferred I will withdraw all my money from HSBC*". Mr B was asked to go to a branch to discuss the payment.

So – I'm satisfied that had HSBC intervened in the payment for £5,611.55 – that Mr B would've gone ahead anyway. He was clearly confident in what he was doing and was determined to make the payment.

I note Mr B says he mentioned the name of the bitcoin company on the call – and therefore HSBC should've known it was a scam company. I didn't hear its name on the call – but even if Mr B had mentioned it, I don't think it's reasonable to expect HSBC to have known about the company or whether it was a scam vehicle. In any case, I noted that the FCA's register was updated with a warning about it on 16 December 2022 – after the payments were made.

So – I don't think it's reasonable that HSBC should refund any of the money paid by Mr B.

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 couldn't see that they'd contacted the provider of Mr B's crypto wallet – but I'm persuaded that had they done so, no funds would've remained – as he'd immediately moved them into the bitcoin trading platform.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 November 2023.

Martin Lord
Ombudsman