

The complaint

Mr and Mrs L complain that HSBC UK Bank plc ('HSBC') won't refund the money they lost in a scam.

What happened

Mr and Mrs L are represented in this case but for ease I'll mainly refer to Mr L throughout this decision, as he is the one who was involved in the scam. All scam payments were made from their joint account with HSBC.

Mr L says that he received a cold call from someone who said he was an investment manager for a company I'll refer to in this decision as C. Mr L didn't know at the time, but the caller was a scammer. He was told that he could achieve good returns by investing in commodities, stocks and shares. Mr L had no experience of investing but after being told that he could achieve greater returns with C's help and, after looking at C's website and some reviews, he decided to go ahead. Mr L took out a loan for £5,800 that credited his account on 17 December 2021.

The scammer advised Mr L to make payments to three different cryptocurrency exchanges after creating accounts using a screen sharing app. Mr L says that he had no access to the accounts and that he wasn't involved in moving funds from these accounts. Below is a table of the payments Mr L made.

Date	Amount	Payee
17/12/21	£7,150	1
17/01/22	£100	1
17/01/22	£96.89 credit	1
17/01/22	£100	2
18/01/22	£100	3
18/01/22	£2,900	3
Total	£10,253.11	

After he'd made the first payment Mr L was given access to a trading platform that showed how his investment was doing which persuaded him to invest more. In January 2022 Mr L was able to make a withdrawal but when he tried to withdraw a larger sum, he was told he needed to pay a fee of £2,900. Once Mr L had made this payment, he was advised he needed to pay more and then the scammers stopped communicating with him and he realised he had been scammed. Mr L reported what had happened to HSBC on 10 June 2022, but HSBC told him he had a civil dispute with C.

HSBC later considered Mr and Mrs L's complaint under the Lending Standards Board Contingent Reimbursement Model Code (CRM Code). It said that it had sufficient fraud prevention measures in place, but that Mr L didn't complete enough checks before making

the payments. In particular, he didn't check that the advisor and C were genuine, didn't question why he wasn't paying C and didn't heed its scam warnings.

Mr and Mrs L were unhappy with HSBC's response and brought a complaint to our service. They said the payments were unusual and out of character and HSBC should have intervened when they were made.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. She said that Mr L didn't have a reasonable basis for believing he was making a legitimate payment, but HSBC didn't provide an effective warning and should have spoken to Mr L when he made the first payment request. So the investigator asked HSBC to pay 50% of the amount Mr and Mrs L lost in the scam plus interest.

HSBC agreed with the investigator's findings, but Mr and Mrs L did not, so the complaint was passed to me to consider. In summary, they said that the 50% deduction was harsh because Mr L was an inexperienced investor and the only way he knew to check the legitimacy of C was online reviews. As he had an account, he didn't expect to receive a contract or documentation and didn't think communicating via a messaging app was unusual because he communicated with other professionals in this manner.

I issued a provisional decision on 19 June 2023 and recommended that HSBC refund 50% of Mr and Mrs L's loss (£5,126.56) plus interest. In the section headed, "*What I've provisionally decided – and why*" I said:

I've considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of the complaint.

Mr L authorised the scam payments from his HSBC account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr L is presumed liable for the loss from his joint account with Mrs L in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect its customer from the possibility of financial harm from fraud. An example of this would be if a payment instruction is sufficiently unusual or uncharacteristic for the usual use of the account. In such circumstances I'd expect HSBC to intervene and ask more questions about the intended transaction before processing it.

On balance, I don't think the CRM Code applies in this case. I say this because the CRM Code only applies to payments to someone else and Mr L made payments to accounts that were in his own name. I'm aware that Mr L has said he didn't make the payments from the cryptocurrency wallets or have control of them, but think Mr L was still aware that his funds were leaving the wallets. So I don't consider the CRM Code applies in this case. Ultimately though, I don't think it makes a difference to the outcome of this complaint whether it is assessed under the CRM Code or good industry practice. This is because if I'm considering this complaint under the CRM Code I need to assess if Mr L had a reasonable basis for believing he was paying for legitimate services. If I'm not considering Mr and Mrs L's complaint under the CRM Code, I need to consider whether Mr and Mrs L contributed to their own loss. So, I'm considering similar points.

I have considered whether the payments from Mr and Mrs L's account were so unusual and out of character that HSBC ought reasonably to have intervened and asked questions when they were made. The £7,150 payment stood out as being unusual due to the amount, the fact it was to a new payee and because the payee was a cryptocurrency exchange. It was also made soon after loan funds credited Mr and Mrs L's account. In the six months before Mr and Mrs L hadn't made any payments over £1,000. So I think HSBC ought to have

recognised a potential scam risk and intervened and asked Mr L some questions about it. I'd expect HSBC to ask the reason for the payment and some probing questions based on that payment purpose, including perhaps how he found out about the investment, what checks he'd completed and what the rate of return was. As Mr L was cold called, I consider HSBC should have asked further questions and it's likely the scam would have been uncovered, particularly given that Mr L took out a loan just before he started to invest.

I've gone on to consider whether Mr and Mrs L should also be partly responsible for their loss. After considering the position carefully I think HSBC should pay Mr and Mrs L half of what they lost in the scam for the following reasons:

- *Mr L received a cold call from someone who claimed to be an investment manager who offered him an investment opportunity. I think it's fair to expect a level of caution in these circumstances.*
- *Mr L says that he looked at C's website and at reviews – which didn't cause him any concern. There were only a very limited number of reviews at the time, but I agree that those available wouldn't have highlighted any problems.*
- *Mr L says he communicated with the scammer via a messaging app for around two weeks before he decided to invest. He's been unable to provide any messages to this service though. The messaging app isn't one I'd expect a legitimate investor to use, and I think Mr L ought reasonably to have had some concerns about communicating in this way.*
- *Mr L says he wasn't provided with a specific rate of return when he invested but says that his investment eventually yielded a return of three times what he invested. This is a huge increase in a short timeframe and suggests the scammer lured Mr L into investing based on unrealistic statements about the returns he might expect. I find it unlikely Mr L would choose to take out a loan with a high rate of interest if he wasn't expecting to get a higher rate from the investment.*
- *Mr L wasn't provided with a contract or any other documentation which set out the terms of his agreement with C. I consider this to be unusual and something that ought to have led Mr L to think something was amiss.*
- *Mr L thought he was investing in commodities, stocks and shares but, with the help of the scammer(s) he opened accounts at three different cryptocurrency exchanges. I've asked Mr L to explain what he thought about this but haven't been provided with a satisfactory explanation. If C was a genuine company, I'd expect funds to go to an account in C's name and certainly not to three different exchanges.*
- *Mr L was aware that accounts had been opened in his name using a screen sharing app but says he had no access to the accounts. This is another red flag I think Mr L ought to have questioned.*
- *Mr L ought reasonably to have had concerns about being asked to take out a loan for investment purposes.*
- *The final £2,900 payment was a fee that Mr L doesn't appear to have been told about before he started to invest.*

I appreciate that Mr L was an inexperienced investor, but I don't think he did enough to satisfy himself he was making a legitimate investment. And whilst I note that Mr L received a small return, this only happened after he'd made most of the payments. Mr and Mrs L's representative has said that Mr L started with small payments which built with pressure from the scammer. But this isn't correct – the largest payment was the initial one of £7,170.

I've also considered HSBC's actions once it was made aware of the scam. But as funds were passed through a cryptocurrency exchange there was nothing HSBC could have done to recover them.

Overall, I'm persuaded that Mr and Mrs L and HSBC should share the loss equally.

I've gone on to consider the rate of interest that should apply to the payment I'm asking HSBC to make. Part of the scam investment was funded by a 24-month loan of £5,800 with a rate of interest of 8.28% and the remainder of the funds were either already in Mr and Mrs L's joint current account or were transferred in (but I don't have any details of the account the funds were transferred from). I'm told Mr L is continuing to make loan repayments and that interest and charges haven't been written off. In the circumstances, I think it would be reasonable to pay interest on the entire amount I'm asking HSBC to refund at the rate of 8% simple per annum from the date of each payment to the date of settlement.

Both parties responded to let me know they accepted my provisional 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.

Neither party has raised any additional points for me to consider so for the same reasons as I set out in my provisional decision (and reproduced above) I'm satisfied HSBC should refund 50% of Mr and Mrs L's loss, plus interest as set out below.

My final decision

For the reasons set out above I require HSBC UK Bank Plc to:

- Refund 50% of Mr and Mrs L's loss (£5,126.56);
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 8 August 2023.

Jay Hadfield
Ombudsman