DRN-4547245

## The complaint

Mr K complains HSBC UK Bank Plc didn't do enough to protect him when he fell victim to an authorised push payment ('APP') scam.

## What happened

In December 2021 Mr K met an individual (who I'll refer to as "the scammer") through an online dating website. Mr K said he and the scammer built up a close friendship over a number of months before the scammer started to discuss crypto investments. The scammer told Mr K she purchased crypto from a legitimate crypto exchange and traded it on a trading platform I'll refer to as "C". Mr K explained he'd previously been interested in investing in crypto, and so was familiar with the crypto exchange and was satisfied it was legitimate. He said he also looked into C, which appeared to be about 3 – 6 months old. He said the website looked informative and professional and he was persuaded it was legitimate.

Mr K was instructed on how to open a crypto wallet on the crypto exchange and how to set up a trading account with C. He then purchased crypto from the crypto exchange and transferred it onto his account with C. Having been persuaded to invest, Mr K made an initial £150 credit card payment from an account held with another bank, before making the following faster payments from his HSBC account:

| Payment | Date | Payment method | Amount |
|---|---|---|---|
| 1 | 16 March 2022 | Faster Payment to crypto exchange | £10 |
| 2 | 29 March 2022 | Faster Payment to crypto exchange | £7,640 |
| 3 | 29 March 2022 | Faster Payment to crypto exchange | £200 |
| 4 | 30 March 2022 | Faster Payment to crypto exchange | £5,600 |
| 5 | 4 April 2022 | Faster Payment to crypto exchange | £6,100 |
| | | **Total** | £19,550 |

Mr K explained that after his initial investment he was able to successfully withdraw £161.07 on 16 March 2022. But when Mr K attempted to make another withdrawal on 30 March 2022, he was told he'd entered his password incorrectly too many times and so would need to pay 50% of his profits to unfreeze his account. Mr K made the payment as instructed and the account was unfrozen. Mr K attempted to withdraw his profits again but was told that as his profits exceeded $25,000 he needed to pay 30% tax, which led to him making the payment on 4 April 2022. Mr K was then able to successfully withdraw £394.53 from the trading account. But he could not withdraw anything further. He was once again told he needed to pay 30% tax. Mr K has said the scammer continued to push him for money and he became overwhelmed. It was at this stage he realised he had been scammed.

Mr K reported the scam to HSBC on 7 April 2022. HSBC advised that as Mr K had transferred funds into a crypto wallet in his own name and control, he would need to raise his concerns with the crypto exchange. In August 2022 Mr K instructed a professional representative, who wrote to HSBC to complain. It said the payments from Mr K's account were significantly out of character and unusual, and so HSBC should have intervened before processing them. It said HSBC would've prevented the payments being made if they'd done that and so, HSBC should therefore reimburse Mr K for his losses, plus interest, and compensation.

HSBC maintained that it was not responsible for Mr K's loss as he'd transferred funds into an account in his own name and control. It also disputed that it needed to intervene before processing the payments as they hadn't flagged on its Fraud Detection System.

Unhappy with HSBC's response, Mr K referred his complaint to the Financial Ombudsman. Our Investigator upheld the complaint as she considered that HSBC ought to have intervened before it processed Mr K's fourth payment (£5,600 on 30 March 2022). She recommended HSBC refund Mr K's losses from that date, plus interest.

Mr K accepted our Investigator's findings, but HSBC disagreed. It did not agree the payments were so unusual that they warranted intervention. It also highlighted concerns with Mr K's testimony and the scam itself. While Mr K had said he had researched C, it noted the company was in fact an electronics company that had no link to investments. It was also not persuaded that had it intervened, as it was suggested it should, that it would have prevented Mr K from making future payments given it would only have given a general warning about the risks of investments.

The case was therefore passed to me to decide.

Having considered the case, I was minded to reach a different conclusion to our Investigator. I therefore wrote to Mr K, via his representatives, and HSBC setting out my thoughts on the complaint and inviting any further comments or evidence that either party wished for me to consider before I reached my final decision.

I highlighted some concerns about whether Mr K had done enough to substantiate that a scam had taken place – although I accepted that the narrative provided by his representative fit a typical scam pattern.

I asked to see evidence of the contact Mr K had with the scammer, and for more information on how he'd been persuaded to invest. I also asked for more information about C, as like HSBC the only information I could find demonstrated that it was a legitimate electronics company operating from North America that appeared to have no connections to crypto investments or any known scams.

While I agreed with out Investigator that HSBC should reasonably have intervened before processing Mr K's fourth payment – on the basis that it did appear to be unusual and out of character for him to be making successive large payments to a crypto exchange – I wasn't persuaded that HSBC's intervention would, more likely than not, have prevented his losses.

It was evident from what Mr K had told us that he had built up a very close and trusting relationship with the scammer over several months before he'd been persuaded to invest. He had also carried out what he believed to be appropriate due diligence which persuaded him that the opportunity was legitimate. He had also seen his early investments making profits and those profits were reflected within his trading account. He had also been able to make some withdrawals from the account. I was also mindful that it was a common feature of similar scams that scammers coach their victims on what to say should a bank intervene. Overall, I wasn't persuaded that it was more likely than not that proportionate intervention from HSBC would have stopped Mr K from making future payments.

HSBC agreed and had nothing further to add. Mr K, via his representatives, disagreed. They provided further information about the scam and what had persuaded Mr K the opportunity was legitimate. They also disagreed that HSBC's intervention would not have prevented

Mr K's losses. They explained that Mr K was an unwitting victim of the scam and would not have risked his savings had he been advised about the prevalence of scams. They said Mr K had not been coached during the scam and there was no evidence to say that he would have been susceptible to coaching by the scammer.

**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.

Having carefully considered everything that has been provided - and while there are still gaps in the evidence Mr K has been able to provide - I am persuaded, on balance, that he did fall victim to a crypto investment scam as described. But while I have been persuaded on that point, I am still unable to safely conclude that proportionate intervention from HSBC would most likely have prevented Mr K's losses. As a result, I am not upholding this complaint.

I realise this will be extremely disappointing to Mr K. I don't underestimate the financial and emotional impact falling victim to a scam can have, and even more so in a scam like this where the scammer has preyed on Mr K's trust and friendship. I can appreciate why he wants to do all he can to recover the money he lost. But I can only direct HSBC to refund his losses if it can fairly and reasonably be held responsible for them, and for the reasons I'll go on to explain I don't think it is.

*Should HSBC have recognised that Mr K was at risk of financial harm from fraud?*

The starting position under the relevant regulations, the Payment Services Regulations 2017 ("PSR 2017"), is that Mr K is responsible for payments he authorised.

But taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, HSBC should reasonably have been on the look-out for the possibility of fraud. It should have taken additional steps, or made additional checks, before processing payments in some circumstances if they appeared significantly out of character for the usual account usage or were otherwise suspicious. But there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

I am satisfied that HSBC didn't reasonably need to take any further action before processing Mr K's first three payments. Payments one and three were for small amounts that were entirely in keeping with Mr K's day-to-day spending. While payment two was for a much more significant sum (£7,640), I can see that Mr K had made a larger payment in the preceding 12 months, so it wouldn't have been seen as completely out of character. And while the payment was going to a crypto provider, which Mr K hadn't done before, I don't think there was enough going on at that point to say HSBC ought reasonably to have intervened.

But I think by the time Mr K attempted the fourth payment (£5,600), HSBC ought to have been concerned that he had now transferred £13,240 to a crypto exchange within 24 hours, which I think ought to have stood out as unusual and potentially suspicious. I consider that HSBC ought to have intervened before it processed Mr K's payment instruction.

In the circumstances, I think HSBC ought to have spoken to Mr K to ask for more information about his intended payment. I would have expected Mr K to have revealed that he was investing in crypto following a tip from a friend, who'd successfully invested. At this stage, I would have expected HSBC to provide Mr K with a warning about the risks of crypto investments scams and advised him to conduct his own research before continuing to make the payment. I would not have expected it to stop the payment. So, it would have been up to Mr K whether to continue with the payment or not.

*Would proportionate intervention from HSBC have prevented Mr K's loss?*

While I consider HSBC ought to have intervened and provided a warning, it does not automatically follow that I think it should be held responsible for any losses that occurred after that point if it failed to do so. To hold HSBC responsible for the losses, I would also need to be satisfied that its intervention would, more likely than not, have prevented Mr K's future losses, and I'm not persuaded it would have.

It's impossible to know for certain what Mr K would have done had HSBC intervened as I'd have expected it to. As such, I must consider everything as a whole to determine what would most likely have happened in the circumstances. While Mr K's representatives have said my conclusions were speculative, in cases like this where there is no definitive evidence to determine the outcome, my conclusions will be always be to some extent speculative.

I accept there were features of the proposed investment with C that may have given HSBC cause for concern that it was a scam – in particular, the fact it involved crypto and there was a third party involved. But there was no specific evidence at the time (or indeed to date) that confirmed that it was indeed a scam – for example, there weren't any published warnings about C from the Financial Conduct Authority (FCA) or other regulatory bodies. I'm also mindful that there were features of the scam that had reassured Mr K that it was in fact legitimate.

I must therefore weigh up whether a proportionate intervention from HSBC, would, more likely than not, have resonated with Mr K more than his own research, experience, and reassurance from the scammer. And I'm not persuaded it would have.

As part of his complaint submissions, Mr K explained that prior to investing he carried out some research but found no negative information about C. He said he was also reassured by various features of C's website. He said he found it incredibly informative and professional and was reassured it was legitimate.

Having purchased crypto and transferred it to C, Mr K says he saw the money credit his trading account. The scammer then gave him step by step guidance on how to trade and saw that he had made significant profits, which were reflected on the trading account balance. I'm also mindful that Mr K was able to successfully withdraw some of his "profits" from the account early on, which would again have reassured him that the investment was legitimate.

I'm also mindful that Mr K was introduced to the scam by someone he'd met online and had built a close and trusting relationship over a number of months before he decided to invest. We have been told that Mr K put his "total trust" in the scammer. This seems to be supported by Mr K's change in attitude to risk as the scam evolved. Mr K has said that prior to the scam, when he'd been independently considering a crypto investment, he had determined to never invest more than £5,000. Yet within the space of a few days the scammer persuaded him to invest nearly £20,000, far exceeding his previous limit. Given Mr K had put so much trust in the scammer, I cannot safely conclude that he would most likely have heeded HSBC's warning and stopped making payments.

I think when balanced against all the information Mr K had gathered himself, as well as a lack of warnings or adverse information about C and reassurance from the scammer, Mr K would have felt reassured that the investment was legitimate. Any further research he carried out would've been unlikely to yield any results that would have led him to believe he was falling victim to a scam.

So, while HSBC should have intervened before processing Mr K's fourth payment, I'm not persuaded it would have prevented his loss. As such, I can't reasonably hold it responsible for his loss from that point.

I have a great deal of sympathy for Mr K and the loss he's suffered. But it would only be fair for me to direct HSBC to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. For the above reasons, I think HSBC has acted fairly and so I'm not going to tell it to do anything further.

**My final decision**

For the reasons given above, 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 K to accept or reject my decision before 25 April 2024.

Lisa De Noronha
**Ombudsman**