

The complaint

Mr O complains HSBC UK Bank Plc have refused to refund money he lost to an investment scam.

Mr O is represented in this complaint, but as it's his complaint, I'll refer mostly to him.

What happened

Mr O met a man, Mr A, in 2019 at a networking event. In 2021, Mr A persuaded Mr O to make a series of transactions to two cryptocurrency wallets (held at Coinbase and Kraken) for the purposes of making investments. Once in the wallet, Mr O then transferred the money on to make the investments.

In 2022, Mr O found that the platforms he'd invested in stopped paying out and later discovered warnings on the Financial Conduct Authority (FCA) register about the company Mr A ran – which appeared to have been providing investment advice - and some of the investment companies.

Mr O complained to HSBC. HSBC responded to say they weren't obliged to refund the payments under the Contingent Reimbursement Model (CRM) as Mr O had sent the payments to cryptocurrency wallets in his name. They also said some of the transactions wouldn't have flagged as unusual because Mr O had made payments to Coinbase before the scam began and that they provided an appropriate warning when Mr O made the first payment to Kraken.

An Investigator considered Mr O's complaint. He said, in summary, he didn't think it should be upheld because – although he thought HSBC should've intervened at one point during the payments – he didn't think this would've prevented Mr O's loss.

Mr O replied to say he didn't agree. So the complaint was passed to me to decide.

I issued a provisional decision. My findings are set out again below and they form part of this decision.

Provisional findings

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

There's no dispute that Mr O has fallen victim to a cruel scam here, nor that he authorised the payments he made to the two cryptocurrency wallets. The payments were made by Mr O himself, using his security credentials provided by HSBC.

Generally, banks should follow their customers' instructions in relation to legitimate payments and, as I've already explained, Mr O did instruct the bank to make these payments. However, there are some situations in which a bank should reasonably have looked more at their customers' payments before allowing them to proceed. So I've also

considered whether HSBC should have done more to prevent Mr O from falling victim to the scam.

Mr O made two calls to HSBC to report the scam, the first on 1 June 2022 and the second on 13 September 2022. When Mr O first contacted HSBC, he told them he hadn't made any payments to the wallet at Coinbase prior to December 2021 but says later in the same conversation that he had made other payments to his wallet with Coinbase that weren't part of the scam. The second time Mr O contacted HSBC he told them the first payment to the scammer was October 2021. Mr O's original complaint to the bank (and the complaint submitted to our service) said the scam payments began in March 2021. And our Investigator asked Mr O, via his representative, about the other payments to Coinbase which hadn't been highlighted as part of the scam. In response to which Mr O said these were payments he made to save money in cryptocurrency. But his representative later told us, all payments to Coinbase were part of the scam. Having listened to Mr O's calls to HSBC though and considering what he told our Investigator in response to their questions, I don't think this is correct. Mr O told us and HSBC he had made payments to Coinbase which were not part of the scam.

Mr O has been inconsistent about which transactions were made as part of the scam and which payments were his own buying of cryptocurrency. Because of this, I'm unable to place much weight on his testimony as to which transactions were made as part of the scam and which were simply Mr O's own cryptocurrency transactions.

What is now clear, is that Mr O had an existing cryptocurrency wallet with Coinbase. He says he opened it in 2017 but didn't use it much before 2021. HSBC have told us the payments to Coinbase didn't flag as outside of Mr O's normal use – because Coinbase was an existing payee on Mr O's account.

The first payment to Coinbase was in February 2021. Having considered the initial payments Mr O made, I don't think these were enough to have prompted an intervention by HSBC considering the amounts and Mr O's usual account activity. However, on 12 March 2021 Mr O made a payment to Coinbase of £10,000. This marked a significant increase in the size of payments to Coinbase and was a large amount compared with Mr O's usual account activity. So I think this payment should have prompted an intervention by HSBC. Based on Mr O's original complaint, this is the first payment made as part of the scam.

If HSBC had contacted Mr O about this payment, I would've expected them to have asked questions about the nature of the payment. I think Mr O likely would've told them it was for investment purposes, and that he was receiving advice from Mr A. I think it's likely Mr O would've explained that he met Mr A in person two years previously and considered him a mentor. It's also clear from Mr O's contact with Mr A that they met in person for meals and meetings – on several occasions. So it seems that he trusted him and I think Mr O likely would have told HSBC this had they questioned him about the transaction he was making. He'd also likely have mentioned that he had held the cryptocurrency wallet for a number of years before this payment and that he'd used it before to make his own cryptocurrency purchases. At the time of this payment there were no warnings about any of the specific investments concerned or Mr A's company. So I think it's unlikely Mr O would have changed his mind about the payment having spoken to HSBC, even if they'd warned him it could be a scam. Nor do I think anything Mr O would likely have said should have prompted HSBC to refuse to make the payment.

Mr O continued to make payments to Coinbase after this in varying amounts. But most of these didn't form part of Mr O's original complaint. For the reasons I've already explained, it's unclear which of these payments were part of the scam, but even if they were, I think further interventions would've been unlikely to reveal he was being scammed or prompted

Mr O to change his mind. By this time, Mr O had received significant returns from Coinbase on at least some of those payments which, it seems, were made as part of the scam, since Mr O says the platforms stopping paying out is what initially prompted his concern that something was wrong in 2022. And, based on Mr O's contact with Mr A during this period – he was content with the returns. So if questioned, I think Mr O would likely have told HSBC that as well.

The first payment to Kraken was made in January 2022 for £15,000. Mr O has told us he started using Kraken because the fees weren't as high as Coinbase. A written warning was given during this transaction. The warning told Mr O his payment had been flagged as high risk and highlighted it could be a scam. It suggested Mr O talk to a trusted person not involved in the investment, independently research who he was sending the money to (including checking the FCA's website) and directed Mr O to HSBC's own fraud centre. Mr O says he didn't see this warning – so, presumably, didn't take any of the advised steps. I think in the circumstances this payment should have prompted HSBC to speak to Mr O rather than just give a written warning. But even if they had, I don't think this would've changed Mr O's overall position.

I say this because again, at the time, there were no warnings on the FCA register about the company Mr A was running and I think it's him or his company Mr O would've mentioned to HSBC if asked, since that's where he was getting the advice to invest. There was an FCA warning in place at this time for one of the actual investments. But given Mr O's relationship with Mr A, the trust he had built and the returns he had received, it seems unlikely that Mr O would have followed any suggestion from HSBC to check the FCA register specifically for the investment company names. I think Mr O would likely have also mentioned he had started using a different cryptocurrency wallet to save on fees – indicating some experience in this area. So again, I think it's unlikely a conversation about this payment would have stopped Mr O from going ahead with it or given HSBC such cause for concern that they should have refused to make it.

HSBC aren't obliged to refund the payments under the CRM, because, as they explained to Mr O at the time of his original complaint, the CRM doesn't cover payments made to accounts held in the same name.

It's unclear whether HSBC made any attempts to recover the funds Mr O had lost when he reported the scam to them. But Mr O says he sent the funds from his cryptocurrency wallets to the scammers straight away, so it seems unlikely there would've been any money remaining for HSBC to recover in any event.

Responses to my provisional decision

Mr O and his representatives both provided responses. I've summarised the points below.

Mr O's representatives said:

- All transactions made to Coinbase were part of the scam.
- They didn't agree that because Mr O had a seemingly close relationship with the scammer, that interventions wouldn't have made a difference.
- Mr O had been the victim of a previous Authorised Push Payment (APP) scam in 2018.
- They said Mr O was unhappy I'd not gone into detail about the payments to Kraken.

Mr O said:

- His representatives are incorrect. Not all the transactions made to Coinbase were part of the scam – only the ones highlighted in his original complaint were. He had made some legitimate payments to Coinbase.
- As I'd said HSBC should've intervened, why didn't they?
- He felt I'd not considered the payments to Kraken in enough detail – considering these were the bulk of the transactions he'd made to the scammers.

HSBC responded to say they had nothing further to add.

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.

Based on the responses to my provisional decision, there still seems to be inconsistency between Mr O and his representatives regarding which transactions formed part of the scam.

Mr O has now told us that only the highlighted Coinbase transactions were part of the scam (there were six of these). But Mr O has also said the Kraken transactions formed the bulk of the transactions to the scammer but only three payments were highlighted as part of the original complaint. And only five were made to Kraken in total during the period of the scam – so I don't agree there were significantly more Kraken payments. So again, a further inconsistency from Mr O and his representatives about which transactions were made as part of the scam.

In any event, I explained in my provisional decision I thought HSBC should have done more in relation to Mr O's first payment to Kraken (and also one of the earlier payments to Coinbase). But, I must also consider whether that intervention (or indeed any intervention) would've likely made a difference in the circumstances of Mr O's complaint.

As I explained, I don't think it would've done in these particular circumstances. I know Mr O's representatives don't agree – they've referenced romance scams in particular to illustrate this point. But this wasn't a romance scam, Mr O had built a friendship with Mr A. Based on what Mr O knew and his relationship with Mr A, *at the time*, I don't think HSBC's intervention would have made a difference for all the reasons I set out in my provisional decision.

For the other Kraken transactions, I wouldn't necessarily have expected these to trigger interventions because of the amounts involved and because of Mr O's other account activity. During the period of the scam, there were over 30 payments to Coinbase and Kraken, only nine of these were disputed in Mr O's original complaint. As Mr O has now confirmed the Coinbase transactions in dispute, this means the large majority of these were genuine payments not made as part of the scam. So I don't think payments to Kraken, after the initial one, would have seemed out of character compared to Mr O's previous account activity of having made regular and, often substantial, payments to cryptocurrency exchanges.

Mr O's representatives said Mr O had been the victim of a previous APP scam – so HSBC should've done more because they knew this. I haven't seen any information about the previous scam. But the previous scam took place in 2018, and Mr O had made a significant number of relatively high value genuine transactions to cryptocurrency exchanges since. So I don't think I can fairly say HSBC should've done more for this specific reason. And in any event, I've already explained why I don't think any interventions would have made a difference.

My final decision

For the reasons I've explained, I don't uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 January 2024.

Eleanor Rippengale
Ombudsman