

The complaint

Mr R complains that HSBC Bank UK Plc won't reimburse money – his and his wife's money – that he says he lost when he fell victim to an investment scam.

What happened

Mr R reports that he was watching a well-known morning television programme when the presenters started discussing investing in cryptocurrency. They showed an investment being made and growth being achieved during the time the programme was on. Mr R also says a well-known chef and an entrepreneur were on the programme indicating how good trading was and the profits that could be withdrawn.

Mr R became interested and so looked up crypto investing online and came across an opportunity that seemed legitimate. After making an online enquiry, he was contacted with an investment trading opportunity in which he opened several crypto currency accounts with different providers. From June 2020, for almost 12 months, Mr R invested a substantial sum. In doing so, Mr R took out two loans with HSBC and two equity release loans – using the proceeds to invest.

Mr R realised he'd been scammed when he tried to make withdrawals and he could no longer contact his 'broker'. He reported the matter to HSBC who partially upheld his complaint. It agreed it could have provided better warnings in relation to the first nine payments, but that after that it had provided effective warnings and so it didn't believe it was responsible for Mr R's further losses. But as Mr R hadn't done any research into the investment business it only refunded 50% of those initial payments totalling nearly £20,000.

Our investigator didn't think HSBC needed to do anymore. She found that Mr R hadn't been honest with HSBC about the purpose of the loans he took out, and that when he was provided with warnings later in the process – which he acknowledged receiving – he proceeded in any event. She therefore found, better earlier interventions were unlikely to have prevented the losses, as she found Mr R would have proceeded with the payments in any event.

Mr R's representative asked for the matter to be decided by an ombudsman. In doing so, it says HSBC ought to have done more to intervene and had it done so earlier, it's likely that would have unravelled the scam, as Mr R wouldn't have been so far under the scammers spell.

The matter was referred to me for review and determination. On review I noted that Mr R, as well as taking out loans with HSBC, had also taken out equity release loans. The borrowed funds were then spent on crypto currency either the same day or within a very short space of time. I asked why Mr R wasn't honest with his HSBC loan applications and why he took out the equity release loans. Mr R explained that he borrowed the funds for home improvements, including the equity release loans. He then diverted the money to invest and to try and withdraw from his investment.

Given his response, I asked for evidence of Mr R obtaining quotes for home improvements, and of the conversations had with scammers that then persuaded him to use the money for his investment instead. Mr R has been unable to provide this and has since said that he did intend to invest with the money but with the subsequent intent of using any profits for home improvements.

During the course of discussing the scam with HSBC, Mr R also indicated that around £55,000 of the money he invested had actually come from his wife. Mr R has not been able to be more specific than that, and so we've agreed to proceed on that basis. Mr R's wife has also joined the complaint as an interested party given some of the funds invested were hers.

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 considered matters carefully, I agree with the outcome reached by the investigator for broadly the same reasons.

- It's accepted by the parties that Mr R has been scammed - HSBC has already made a partial refund. But for the sake of completeness, the submissions about what happened in conjunction with information found online from other sources shows that others have also suffered losses in similar circumstances, which all point towards Mr R having been scammed.
- Mr R reports that he saw an article about crypto currency trading on a well-known morning television program. He said that program also had interviews with a celebrity chef, and a celebrity entrepreneur extolling the virtues of crypto currency trading. As a result of that he decided to look into opportunities further. However, having researched this, no such article ever appeared on the morning television program as Mr R describes, either with the celebrities or at all. It doesn't seem to me, therefore, this is what actually persuaded Mr R to look into this type of investment. Whilst it is true that fake articles have appeared on video sharing platforms online, this isn't how Mr R describes what happened. So it's hard to place much weight on this being the reason why Mr R was initially persuaded to invest.
- It isn't in dispute that Mr R authorised the disputed payments in question, even if he did so in the belief he was investing legitimately. 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 have considered whether HSBC should have done more to prevent Mr R from falling victim to a scam, as there are some situations where a bank should reasonably have taken a closer look at a particular transfer – if it's suspicious or out of character, for example.
- HSBC has already made a partial refund of some initial payments (it's actually eight given the amount paid) as it acknowledged better warnings could have been provided. So it falls to me to decide whether or not this is a fair resolution to the complaint, given Mr R's (and his wife's) losses.
- Mr R initially started 'investing' in June 2020. The first three payments, although fairly sizeable, were spaced over a number of weeks. Whilst some of the transactions were higher than others that had taken place on the account, I'm not necessarily persuaded they were so unusual or so suspicious that HSBC ought to have been on notice something untoward might have been happening. But from 21 July, Mr R's payments in one day started to increase and became closer together. And on 27 July 2020 Mr R used the proceeds of a loan from HSBC to buy £9,000 of crypto currency. I think there is an argument to say that when the second payment was made on 21 July 2020 for £8,800 – which was the second payment that day and brought to total

sent to £10,000 in one day) - HSBC ought reasonably to have made further enquiries before following the instruction, and certainly by the time the loan proceeds were used.

- But that isn't enough for me to find HSBC ought to reimburse any more than it already has. I need to be persuaded that Mr R would have acted on an intervention and that it would have unravelled the scam. And in considering that I've borne in mind that a lot of the payments were made in branch.
- On 26 July 2020, Mr R took out a loan with HSBC for £14,000 for home improvements (and other loans later on). But that wasn't what he used the loan proceeds for, he used them – at least £12,000 – for buying crypto currency the following day. When I asked questions about this Mr R initially told us that he did intend to use the money borrowed for home improvements, but that he was persuaded to invest instead. But when I highlighted the close proximity between the date of the borrowing and the payments going to crypto (as well as there being no evidence that Mr R was even arranging home improvement through quotes etc) Mr R admitted that he intended to use the borrowing for investing and that any profit would actually be used for home improvements. That means that Mr R wasn't honest with HSBC about why he was borrowing (and he didn't respond to us entirely honestly either). I understand Mr R gave the same reason for a further loan taken out with HSBC the following month, and for substantial equity release loans taken the following year, but all of them were actually used for investing. As equity release loans are secured by a charge over property, I understand independent legal advice needed to be obtained. Mr R has confirmed he told the surveyor he was borrowing for home improvements, and although I don't know for certain, it's a reasonable assumption that's what he told the solicitors also. So Mr R wasn't honest on more than one occasion and more importantly when that involved discussions about his home. It's not clear why Mr R wasn't honest and when we asked questions about that, an explanation wasn't provided.
- HSBC did pause a payment on 26 August 2020, for £10,000 as it was concerned about it. HSBC's notes record that Mr R did attempt to verify the payment and confirmed it was to repay a loan. But as the agent wasn't persuaded by Mr R's responses he was directed to branch. So there was an attempt by Mr R to be dishonest about the purpose of the payment during that conversation.
- When Mr R attended branch, he did confirm the payment was for an investment and its records suggest he was provided with warnings about investment scams. Rather than continue with the payment Mr R said he would make other arrangements. Far from unravelling the scam, rather than use HSBC, which questioned him, Mr R said he'd make other arrangements.
- Over the course of the coming months, HSBC appears to have spoken with Mr R on several occasions, paused payments and given warnings of investment scams, including on several large payment he made. Although the records of those events are limited, Mr R himself acknowledges he received scam warnings, but he proceeded as he thought the investment was genuine. And during calls he had after reporting the scam, it came to light that Mr R wasn't honest during intervention discussions either – although he had confirmed he was investing, he hadn't confirmed that someone was helping him invest – which is often a scam indicator. So it doesn't appear HSBC was ever provided with the full picture.
- It also doesn't appear Mr R carried out any due diligence before deciding to part with his money. During the initial months of him investing, and certainly before he decided to take out equity release loans, there are several reviews indicating the broker was a scammer and that people had lost money. Due diligence isn't just required at the outset, although that's when it's often done, but throughout.
- However, I'm also mindful that there does appear to have been missed opportunities by HSBC. For example, I understand Mr R was contacted in November 2020 when

his account was over its overdraft limit. HSBC was told that Mr R was expecting a return of £17,500 in a few weeks from an investment. It appears the staff member was concerned he may have been falling victim to a scam and raised the issue – but it doesn't look as though anything further was done about that.

This is a finely balanced case. Whilst I don't know the content of any intervention discussions for sure, Mr R acknowledges that he was provided with investment scam warnings when making a number of the payments. And when he reported the scam and was discussing the matter with the bank, it came to light that he didn't tell the bank about the 'investment company' that was helping him trade, so he didn't help the bank to help him. That combined with the evidence that shows Mr R wasn't honest with his loan applications, including those that were secured on his property, means it's far from certain that HSBC could have unravelled the scam at any point. Whilst it's always possible more could have been done, on balance I'm not persuaded in the circumstances of this case, that Mr R would have stopped investing and so he would always have suffered the losses he did.

I therefore find the redress HSBC has already paid to be a more than fair resolution of the complaint. I realise this will come as a considerable disappointment to Mr R, not least because he has lost a substantial sum of money, that he borrowed and he needs to repay. However, as I don't find Mr R would have acted any differently had interventions been better, I'm not persuaded it would be fair or reasonable to ask the bank to pay anything more.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 February 2024.

Claire Hopkins
Ombudsman