

The complaint

Mr F complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost in a scam.

What happened

Mr F says he saw a celebrity endorsed social media advert about investing in cryptocurrency through a company I'll call G in this decision. He clicked on a link to G's website where he registered his details and was asked to pay a fee, which he paid by card. Mr F was then assigned a financial adviser who would teach him about investing in cryptocurrency. The advisor explained that HSBC wasn't a cryptocurrency friendly bank and to set up an account with an electronic money institution (EMI). After making the card payment (£183.14 plus a transaction fee) Mr F transferred £100 from his HSBC account to his EMI account. He then tried to transfer £20,050 but the payment was blocked by HSBC. Mr F thinks the transaction was blocked because his name on the EMI account wasn't spelled correctly.

Mr F says G's adviser told him that it was standard practice for a bank to stop a payment and that if he wanted to trade, he should give a different reason for the payment. At the time, Mr F's wife was abroad, so he says he decided to say he was transferring funds to his EMI account to make international payments. Once Mr F's funds reached his EMI account, he transferred them to trading accounts. Mr F made the following payments:

Date	Amount
29/09/22	£100
14/10/22	£20,500
29/10/22	£6,000
30/10/22	£6,000
31/10/22	£3,000
02/11/22	£10,000
03/11/22	£7,000
03/11/22	£8,500
03/11/22	£9,500
04/11/22	£7,700
04/11/22	£4,900
07/11/22	£130
07/11/22	£50

Mr F was able to return £4,900 to his HSBC account so his total loss, including the initial card payment, was £78,480.

When he tried to withdraw funds Mr F encountered difficulties and ultimately realised he was the victim of a scam. He contacted HSBC to report what had happened.

HSBC said the card transaction was authorised by Mr F and didn't match fraud trends it was seeing at the time. HSBC also said that it wasn't responsible for the faster payments as Mr F's loss wasn't from his HSBC account.

Mr F was unhappy with HSBC's response and brought a complaint to this service. He said HSBC didn't do enough to protect his funds.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that HSBC intervened when Mr F made the first larger payment of £20,500 but Mr F wasn't truthful in his responses. The answers Mr F gave didn't give HSBC any cause for concern. And even if more questions had been asked Mr F had been provided with a cover story meaning that HSBC wouldn't have uncovered the scam. Later payments were then made to an existing payee that HSBC had already asked Mr F about. Turning to the initial card payment, the investigator said there was very little chance of a chargeback being successful.

Mr F provided a detailed response, which I have carefully considered. I can't set out every point he raised so will summarise his main points:

- He was hoping this service would investigate HSBC's practices and whether they are still effective given the recent escalation of scams.
- The investigator's view lacks knowledge of good industry practice, lacks compassion and doesn't consider his position as a vulnerable victim of financial crime. Mr F referred specifically to BSI: PAS 17271 2017, the Quincecare Duty, FCA Principle 6, FCA papers, and guidance on improving outcomes for vulnerable customers.
- HSBC failed to identify fraudulent companies and should have known there was an FCA warning in place in respect of the scam company.
- This service needs to take into account the timing, volume and frequency of transactions. HSBC should have contacted him again about the continuing transactions.
- Mr F referred to particular sections of the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).
- HSBC has chosen not to educate its customers about fraud, not to increase fraud detection measures, not to collaborate with law enforcement agencies and not to provide immediate assistance to victims of scams.
- Some of the questions asked by HSBC when it intervened show that HSBC is well aware that scam victims are coached to lie to banks so it should have taken additional steps to protect him and given practical help to establish if a scam is taking place.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. This includes things like the BSI guidelines and FCA rules and papers raised by Mr F, although I don't intend to go through each one in detail.

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's fair and reasonable in this case.

However, taking into account the law, regulator's 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.

Mr F has referred to the CRM Code, but this only applies to faster payments to another person, so isn't relevant here - as Mr F transferred funds to his own EMI account before sending them to the scammer. Card payments also aren't covered by the CRM Code.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr F when he authorised payments from his account or whether it could and should have done more before processing them.

The first transaction Mr F made was a low value card transaction. I wouldn't have expected HSBC to have had any concerns about this payment and don't consider a chargeback would have been successful.

HSBC flagged a £20,050 transaction to Mr F's EMI account on 6 October 2022 because the name of the account didn't match. It advised Mr F to check the account details and to go into branch with identification. The transaction was reversed, and Mr F went into branch and spoke to someone in HSBC's fraud department on 14 October 2022. I've listened to this call and have set out some of the questions/points discussed:

- Was it Mr F making the transaction? Yes
- Did Mr F receive the £100 previously sent to the same account – yes
- Does Mr F own the EMI account – yes
- Does Mr F have access to the EMI account? Yes
- How long Mr F had the account for – opened last week
- Was the £100 transaction the first transfer to the account? Yes
- Whether the account was opened for Mr F? No, he opened it himself
- Not forced, coerced or taught by someone else? No
- Why Mr F was moving funds – as another bank account to transfer funds abroad
- Whether Mr F received calls, texts or emails from a third-party asking him to make

this payment – no

- Whether Mr F had been asked to share security information – no
- Whether anyone had transferred the money to Mr F and asked him to pass it on – no
- When Mr F made the transfer online did he read and understand the fraud warnings provided - yes
- Whether he received a confirmation of payee match notice when he set up the new payee – Mr F couldn't remember so the HSBC fraud advisor checked the £100 payment was received.
- Has he received any unexpected calls asking him to set up a new payee or to move money to a safe account – no
- Where the funds came from – another of Mr F's accounts

I consider HSBC asked the kind of questions it ought reasonably to have asked to satisfy itself Mr F wasn't at risk of financial harm. The answers Mr F gave didn't give rise to any concern. If Mr F had provided honest answers, I'd have expected HSBC to ask more questions about the investment, how he found out about it, what was being offered and the research Mr F had completed, but this wasn't what happened. Whilst I'd expect HSBC to ask probing questions, I wouldn't expect it to interrogate Mr F.

HSBC established Mr F was sending funds to an EMI account owned and controlled by Mr F and that funds sent to the same account previously had been received. The reason Mr F gave for doing so was plausible and many people use EMI accounts for international transfers. So, I consider HSBC acted reasonably in being reassured by Mr F's responses. HSBC went further though, and asked,

"Has anyone told you how to answer our questions or asked you to mislead HSBC in any way about the purpose of the payment?"

Mr F said "no" and the HSBC adviser went on to say,

"Because if you have been told by anybody on how to answer our questions then you need to speak to someone independently before making the transfer since that's a strong indication that you're being scammed, OK?"

So, Mr F was warned that being told how to answer HSBC's questions was a strong indicator of a scam but still chose to continue with the transaction and future payments.

Overall, I'm satisfied that HSBC went far enough but was prevented from tailoring its questions and warnings to the type of scam Mr F fell victim to because Mr F didn't answer HSBC's questions honestly. I don't consider there was anything more HSBC could reasonably have done in this call and am mindful that the funds were going to an account owned and controlled by Mr F. In the circumstances, I can't fairly ask HSBC to reimburse him.

Mr F has referred to being vulnerable at the time of the scam. There is no evidence HSBC was made aware of any vulnerabilities, so it had no reason to tailor its approach to any such vulnerabilities, and, as I've highlighted above, HSBC didn't know Mr F was investing.

Mr F believes that HSBC should have intervened when future payments were made as the pattern of transactions was suspicious. HSBC had stopped a higher payment though and established that the funds were going to an account owned and controlled by Mr F. In any event, I can't see that any further conversations with Mr F would have made a difference and led to the scam being uncovered because I'm persuaded Mr F wouldn't have given honest answers. I don't think Mr F would have said he was asked to open an EMI account to circumvent HSBC's security systems or that he was investing in cryptocurrency.

I am required to consider the individual circumstances of Mr F's complaint and whether HSBC has treated him fairly. It is not for me to comment more generally on HSBC's practices as Mr F suggests.

Finally, as funds went to an account in Mr F's name there was nothing HSBC could have done to recover them.

Overall, whilst I'm sorry to hear Mr F has lost a lot of money, I can't reasonably ask HSBC to refund him.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 February 2024.

Jay Hadfield
Ombudsman