

The complaint

Mr and Mrs S are unhappy that HSBC UK Bank Plc won't reimburse money they lost to a scam.

What happened

On 17 April 2024 I issued my provisional decision on this complaint. I wanted to give both parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Although the loss happened from a joint account held by both Mr and Mrs S, it was Mr S that interacted with the fraudsters and HSBC. So, for ease, I'll mostly be referring to Mr S throughout this decision.

Mr S heard about cryptocurrency and wanted to invest. He went online and found an investment company that I'll call P. P said that Mr S could make significant profits trading in cryptocurrency. Mr S invested £4,000 by way of a Faster Payment and received £900 back in 'profit' the same day. It's not clear exactly who the recipient of this payment was. But Mr S says that it appeared on his account at P but, unlike the later payments he made it was not sent through other accounts under his control and converted into cryptocurrency.

Towards the end of April 2022, Mr S was contacted again and told that his investment had increased in value significantly – first to over £80,000 and then later, over £200,000.

Mr S wanted to withdraw his funds but was told that, in order to receive his profits, he'd need to pay money into an account at an FCA-authorized Electronic Money Institution (EMI) – "W", before paying it to another EMI – "R" and finally onto a cryptocurrency firm – "B". From B Mr S sent cryptocurrency to cryptocurrency wallets controlled by the fraudsters.

HSBC flagged an initial card payment of £4,500 that Mr S was attempting to make to his account at W and that payment was reversed. Mr S spoke to HSBC about this payment. After discussing the potential risks of that payment with HSBC, Mr S agreed that he'd carry out further checks before deciding whether to go ahead. That call will be described in more detail later in this provisional decision.

On 4 May 2022, Mr S spoke to HSBC and asked it to make a payment of £21,000. At that point he said that he was transferring money so as not to have it all in one place and that he needed to carry out some home improvements. Mr S says this explanation had been suggested by the fraudsters, but he would have told the bank he was converting the money into cryptocurrency, if asked.

Mr S then went on to make payments totalling around £160,000 through HSBC's telephone banking facility to his account at W. The payments were made in order to pay various fees that the fraudster's claimed were necessary in order to release his profits.

Payment number	Date and time	Amount	Recipient
1	3 March 2022	£4,000	Third-party account
	3 March 2022	£900	Credit from third-party account
2	25 April 2022	£4,500	Attempted payment to Mr S' account at W
	26 April 2022		Call with HSBC
3	4 May 2022	£10,000	Mr S' account at W
	4 May 2022		Call with HSBC
4	5 May 2022	£10,000	Mr S' account at W
5	6 May 2022	£1,000	Mr S' account at W
6	9 May 2022	£20,217	Mr S' account at W
7	13 May 2022*	£25,000	Mr S' account at W
8	14 May 2022	£11,600	Mr S' account at W
9	14 May 2022	£13,400	Mr S' account at W
10	16 May 2022	£25,000	Mr S' account at W
11	17 May 2022	£24,500	Mr S' account at W
12	18 May 2022	£21,000	Mr S' account at W
	Total	£164,817	
	Total sent to W	£161,717	

*R agreed to refund 50% of the loss from this point.

Mr S spoke to a number of different people at P. He said that they came across as relaxed and friendly. He found the scam to be very sophisticated and persuasive. He says that he had checked reviews for P and found them to be mixed – with some people complaining about the time taken to process withdrawals, but nobody mentioning having been scammed. He said that he spoke to a friend after the 26 April 2022 conversation with HSBC and they encouraged him to go with his instincts on whether the fraudsters could be trusted.

When the requests for more money kept coming, Mr S began to think that something wasn't right about his investment, so he contacted the fraudsters to ask if everything was legitimate. They didn't respond and the phone numbers he had for them stopped working.

Mr S contacted HSBC, W and R to raise claims. All three declined to provide reimbursement. HSBC said that as the payment had gone to Mr S' own account at W, he should take the matter up with it.

Mr S referred all three complaints to our service. One of our Investigators upheld, in part, his complaint about HSBC. They noted that, during the telephone conversation on 26 April 2022, Mr S revealed a number of concerning pieces of information, but HSBC then went on to let Mr S make a series of high value payments while accepting his subsequent explanation for them at face value. The Investigator thought that, on balance, Mr S would have revealed what he was actually doing if questioned further. However, they also thought that Mr S should bear some responsibility for what happened. So, they recommended that HSBC pay Mr S 50% of his loss from 4 May 2022 onwards, as well as 8% simple interest per annum on that amount from the date of each payment to the date of settlement.

The Investigator found that W should not bear any responsibility for the loss, but that R should refund Mr S 50% of the loss that took place from and including the £25,000 payment

on 13 May 2022 (a payment of the same amount on the same date debited his account at R).

Mr S accepted both recommendations. R also accepted the Investigator's findings and has provided a refund of the amount recommended (£60,250). The complaints about W and R are settled and I am only considering this complaint.

HSBC disagreed with the Investigator's findings, in summary it said:

- There was no basis for saying that it should refund payments that went to an account held in Mr S' name and other decisions issued by our service support its position. It wasn't even clear that Mr S had actually lost his money.
- The call on 26 April 2022 did point out some of the key risks – including that fraudsters would claim that investments had significantly increased in value.
- R, as the final firm in the chain before the payments were made to cryptocurrency, would have been in a much better position to identify the scam risk.
- The focus of the conversation that took place on 4 May 2022 was the specific payment, not what had happened previously. There would have been no obvious connection to the payment that was attempted on 25 April 2022.
- Mr S misled it about the purpose of the payments and it doesn't believe that he would have been any more honest if he'd been questioned further.
- It had given a warning previously, but Mr S ignored it, so it's unlikely he would have behaved any differently had a better warning been provided in the 4 May 2022 call.
- Mr S should bear full responsibility for his loss – the returns were too good to be true, the reasons for the payments didn't make sense and he ignored its warnings.

The Investigator contacted HSBC again and revised their recommendation as to redress. They thought that HSBC should fairly and reasonably refund a third of the total loss – around £53,000. Mr S accepted this. The Investigator then further revised their view – recommending that HSBC should actually refund 50% of the outstanding loss – a total of around £50,000.

As no agreement could be reached, the case was passed to me for a final decision.

What I've provisionally 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.

The starting point under the relevant regulations is that Mr S is responsible for payments he's authorised himself.

But HSBC is also a signatory of the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code") which requires firms to reimburse victims of APP scams like this one in all but a limited number of circumstances. The majority of the transactions in dispute here do not fall under the provisions of the CRM Code as it only covers payments made to 'another person' (and not, therefore, payments made to the customer's own account). However, payment 1 doesn't appear to have been made to Mr S' own account, so I think the provisions of the CRM Code are potentially relevant for that payment.

In addition, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time these payments were made, I think HSBC ought, fairly and reasonably, to have been on the lookout for out of character and unusual transactions and other indications that its customer might be at risk of

financial harm from fraud. And, although I think the fact that the payments were going to an account in Mr S' name can, in some circumstances, be taken into account when deciding whether a transaction presents risk, it certainly does not eliminate risk and, fairly and reasonably, I can still take into account the role HSBC had in failing to prevent the fraud.

Payment 1

I'm satisfied that HSBC considered this payment as part of Mr S' claim. It told Mr S that it considered this payment to relate to a civil dispute, rather than a scam. Payments made in relation to civil disputes are excluded under the CRM Code. It's reasoning for this conclusion appears to be that Mr S received a return (albeit considerably less than he paid).

I don't agree with this rationale. Mr S told us that the £4,000 was visible on the fraudulent trading account that also showed the very large investment balance. That strongly suggests that all of the payments ended up in the hands of the same fraudsters. I don't think there is any dispute that the later payments were made as part of a scam and there is no reason to treat payment 1 differently – the apparent success of the investment in relation to payment 1 appears to have been what induced the later payments.

Payment 1 didn't go to Mr S' own cryptocurrency account and instead appears to have been paid to an account under the control of the fraudsters. As the payment meets all the other relevant criteria, I think it should be considered under the CRM Code.

Under the CRM Code, HSBC should reimburse its customer unless it can demonstrate that one of the exceptions to reimbursement applies. So far as might be relevant here they are: Mr S ignored an 'Effective Warning' and he made the payment without a reasonable basis for believing that the payee was the person he was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom he transacted was legitimate.

HSBC's submissions don't provide any evidence that it warned Mr S before payment 1. So, I can't say that Mr S ignored an Effective Warning in relation to it.

I've also considered whether Mr S' belief that the investment was genuine was reasonable at the time of making payment 1. I accept there isn't a huge amount of evidence about the plausibility of the scam at this point. Mr S says that he spoke to the fraudsters mostly on the phone. Though I can see that Mr S has mentioned emails, he doesn't appear to have retained them. So, I've largely based my view on Mr S' testimony. He says he spoke to several people at P and checked the reviews he found online. He says those reviews were mixed – but none indicated that customers of P were being scammed. He also says the fraudsters told him that cryptocurrency was volatile and the value could go up rapidly, but also fall very quickly. Although the fraudsters then seem to have suggested that they could generate returns on his initial investment (and they seemingly did), my overall impression is that Mr S was, at this point, investing what he could afford to lose. He does not appear to have suspected that he might be being scammed by the fraudsters, but was willing to see whether they could generate the kind of returns suggested.

Overall, while I accept this is a relatively finely balanced point, I'm provisionally minded to conclude that Mr S did hold a reasonable basis for believing that the investment was legitimate when he made payment 1. That means HSBC should reimburse the outstanding loss from that payment.

Payments 3-12

In this case, it's clear that HSBC had concerns about payment 2. It reversed that payment and spoke to Mr S. During that conversation Mr S explained that he was converting money into cryptocurrency. He also made a number of statements which, in my view, should have given HSBC very significant cause for concern:

- He'd been asked to mislead the bank about the purpose of the payment.*
- He'd been guided through the process of setting up his new accounts by a third party.*
- He'd downloaded 'remote access software'.*
- He'd been shown that he held a very large cryptocurrency balance and was now making payments in order to gain access to it. He was concerned about being asked to make further payments.*
- He was moving money through multiple accounts under his own control and didn't really understand why.*

While the bank's advisor mentioned risks associated with cryptocurrency, they failed to identify that Mr S was clearly falling victim to a scam. That fact should have been obvious. Instead of focussing on the clear risk, the advisor frequently interrupted the conversation to talk about other scam risks – risks that were irrelevant based on the information that Mr S provided. The advisor also suggested, among other things, that Mr S should seek further advice from the fraudulent investment company itself.

While I accept that Mr S did come away from the call doubting the legitimacy of the scheme and intending to carry out further checks, I think the intervention was poor. And I need to consider what might have happened had it been to a standard I'd expect.

I'm satisfied that based on the information provided by Mr S, HSBC ought to have warned him, in no uncertain terms, that he was falling victim to a scam. Instead, the warning was vague and not particularly tailored to Mr S' circumstances. The advisor agreed that Mr S had a 'difficult' decision to make about whether to proceed. I can't agree that it was a difficult decision.

Mr S says that he spoke to his friend following the call and they told him that he should go with his instincts – if he felt he could trust the people he'd been speaking to. My impression is that Mr S was left with doubt following the call about payment 2, but not a firm belief that he was almost certainly falling victim to a scam. Had the call gone in the way I would have expected, Mr S should have left with that impression. He should have been told not to engage with the fraudsters any further.

So, I think that it's HSBC's failing in this call that led to Mr S' subsequent losses. The lack of a clear warning left him vulnerable to fall back under the influence of the fraudsters and non-experts – such as his friend. Had a clear warning been given, I don't think that Mr S would have gone on to attempt further payments.

And, in addition, the warning he did receive during the 4 May 2022 call was superficial and failed to reference the earlier conversation. I don't think that HSBC, in light of the deeply concerning information that was provided during the call in relation to payment 2, should have taken Mr S' answers at face value and neither do I think that Mr S would have maintained those responses if questioned further.

Overall, I'm satisfied that, despite Mr S describing circumstances which very closely matched a well-known scam, HSBC failed to provide a proportionate warning and, had it done so, Mr S' losses from payment 3 would have been prevented.

Should HSBC be fairly and reasonably held responsible for part of Mr S' loss

In reaching my decision about what is fair and reasonable, I have taken into account that Mr S transferred the money to an account in his own name, rather than directly to the fraudster, so he remained in control of his money after he made the payments from his HSBC account, and it took further steps before the money was lost to the fraudsters.

But for the reasons I have set out above, I am satisfied that it would be fair to hold HSBC responsible for part of Mr S' losses (subject to a deduction for Mr S' own contribution). The potential for multi-stage scams ought to have been well known to HSBC by April 2022, when these payments began taking place, and as a matter of good practice HSBC should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams, as it clearly was in this case. HSBC failed to adequately warn Mr S before he made payment 2 and payment 3, despite the clear scam risk. In those circumstances I am satisfied it is fair to hold HSBC responsible for some of Mr S' loss.

I have also taken into account that the payments were made to two other regulated businesses and that our service has considered complaints about both of those firms. Both of those complaints have been resolved prior to my involvement and I am left to consider the complaint in front of me. I have found that HSBC did not act fairly and reasonably in the circumstances of this case.

Should Mr S bear any responsibility for his losses?

I've also thought about whether, taking into account what the law says about contributory negligence as well as what is fair and reasonable in the circumstances of this complaint, Mr S should bear some responsibility for his losses. While I accept that there were sophisticated aspects to this scam and I believe that Mr S found the fraudsters to be very convincing, from a very early point (i.e. all the payments after payment 1) Mr S wasn't investing in the scheme, but rather paying fees in order to release his investment. While explanations were given as to why the various fees couldn't be deducted from the amount he'd receive, I think Mr S ought to have realised that the unexpected requests for further monies might never stop.

Mr S also decided to carry on engaging with the fraudsters despite reservations during the call in relation to payment 2 and the rather unrealistic returns he'd apparently generated. He also misled the bank about the nature of the payments when it contacted him again. I think he ought to have recognised that a genuine investment company wouldn't encourage him to mislead the bank. Overall, by payment 2, there was more than enough to put Mr S on inquiry that the investment wasn't genuine and I think he should bear some responsibility for the loss that he suffered.

Recovery

The vast majority Mr and Mrs S' money passed through several other accounts, before being converted to cryptocurrency and sent to the fraudsters. In these circumstances, HSBC had no realistic prospect of recovering their money. I've seen evidence that no funds remained in Mr S' account at R and that nothing was recovered to that account. I can't see that it attempted to recover payment 1, but I'm, in any case, minded to conclude that it should refund this payment in full.

Putting things right

As a starting point, HSBC should reimburse the outstanding loss from payment 1 in full. That amount is £3,100.

Our investigator found (as part of a separate complaint) that R was responsible for £60,250 of the loss. That being 50% of the payments which took place on and after 13 May 2022 (the point at which the Investigator found that R should have intervened and questioned the payments). The same money passed from HSBC to W to R. I need to decide what responsibility HSBC and Mr S should bear for that money, taking into account the amount that's already been paid to Mr S. Given that I've provisionally decided that Mr S should also bear some responsibility for his loss after payment 1, it would not be fair for him to recover all of his outstanding losses from HSBC and R.

As I've set out, I think that Mr S should bear some responsibility for his losses after payment 1. I've considered this point carefully and, taking into account the actions of the other parties which have also been found to be at fault for the same loss, I think that a fair deduction from the amount reimbursed is 34%. That means that Mr S should receive no more than 66% of the loss for which I find it fair and reasonable that he, HSBC and R should be responsible for (that is payments 7-12). As R have already paid 50% of that amount, HSBC should pay 16%. I calculate that amount to be £19,280.

HSBC should also reimburse 50% of the payments (after payment 1) that it alone is responsible for (that is payments 3-6). I calculate that amount to be £20,680.50.

Therefore, I'm provisionally minded to conclude that HSBC should reimburse a total of £43,060.50.

I also think that HSBC should pay 8% simple interest per year on that amount from the date of each payment to the date of settlement. I think this fairly reflects the time Mr and Mrs S have spent without the money.

My provisional decision

I'm provisionally minded to uphold this complaint in part and instruct HSBC UK Bank Plc to pay Mr and Mrs S:

- *100% of the outstanding loss from payment 1 - £3,100*
- *8% simple interest per year on the outstanding loss from payment 1, from the date HSBC declined Mr and Mrs S' claim under the CRM Code, to the date of settlement.*
- *50% of the outstanding loss from payments 3-6 – a total of £20,680.50*
- *16% of the outstanding loss from payments 7-12 – a total of £19,280*
- *8% simple interest per year on payments 3-12 from the date of each payment to the date of settlement.*

Mr and Mrs S accepted my provisional decision. HSBC did not. In summary, it said:

- The approach taken in the provisional decision is not in line with industry practice. In particular, it does not agree that there is any law, regulations or good industry practice which specifically relates to payments to a customer's own account with another FCA regulated institution.
- The Payment Service Regulator's ("PSR") mandatory reimbursement scheme would not require it to reimburse Mr and Mrs S in these circumstances (instead the payment service provider at the point the funds were lost to the fraudster would be responsible). The PSR should be treated as an authority on this matter and its view represents good industry practice.
- It acknowledges my findings in relation to a call it had with Mr S, but it still believes

that R should be responsible for any loss.

- Decisions issued by the Financial Ombudsman support its view that it should not be responsible in these circumstances. It believes the chain of causation was broken by Mr S sending funds to his own account.
- Had it prevented Mr S from making the payments, he would have found another way of making them.

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.

I've considered HSBC's further submissions carefully, but they don't persuade me to depart from the conclusion reached in my provisional decision set out above.

It's first important to state that I cannot comment on any other decision issued by our service.

I set out in my provisional decision that I could, fairly and reasonably, still take into account HSBC's role in preventing fraud, despite the fact the payments went, in the first instance, to an account controlled by Mr S. I explained that in reaching that view I'd taken into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time the payments were made. I understand that HSBC disputes that what I've articulated represents good industry practice, but I think that by April 2022, HSBC ought to have been aware of the risk of multi-stage scams, and the use of an Electronic Money Institution as an intermediate step between a high street bank account and a cryptocurrency wallet (and its conversations with Mr S in relation to payments 2 and 3 indicate that it was aware of that risk).

I'm also aware that the PSR's mandatory reimbursement scheme would not require HSBC to reimburse Mr and Mrs S. The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR does not propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that HSBC should not compensate Mr S in circumstances where it failed to act fairly and reasonably, as I have found was the case here. Indeed, the PSR has recently reminded firms that fraud victims have a right to make complaints and refer them to the Financial Ombudsman Service that exists separately from the intended reimbursement rights and that APP scam victims will still be able to bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules)¹.

I've also seen nothing to suggest that Mr S was determined to carry out the payments – quite the opposite is true. As I've explained in some detail, Mr S clearly had significant

¹ *"The reimbursement rules and their award limit differ from the rules which govern complaints under the Financial Ombudsman Service's dispute resolution rules (DISP). PSPs should therefore inform victims of APP scams that, in addition to their right to seek reimbursement under the reimbursement rules, they have the right to bring complaints against sending and receiving PSPs if they are dissatisfied with their conduct and consider this has caused their loss. Such complaints may ultimately be referred to the Financial Ombudsman Service."* PSR PS23/4 7.18

doubts about the scheme and with a clearer and better warning from HSBC, I remain satisfied that he would not have proceeded and his loss would have been prevented.

Please note that the amount to be refunded from payments 3-6 is £20,608.50, rather than £20,680.50 as stated in my provisional decision. That means the total amount that I've decided HSBC should reimburse is £42,988.50.

My final decision

I uphold this complaint in part and instruct HSBC UK Bank Plc to pay Mr and Mrs S:

- 100% of the outstanding loss from payment 1 - £3,100
- 8% simple interest per year on the outstanding loss from payment 1, from the date HSBC declined Mr and Mrs S' claim under the CRM Code, to the date of settlement
- 50% of the outstanding loss from payments 3-6 – a total of £20,608.50
- 16% of the outstanding loss from payments 7-12 – a total of £19,280
- 8% simple interest per year on payments 3-12 from the date of each payment to the date of settlement

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give Mr and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 18 June 2024.

Rich Drury
Ombudsman