

## The complaint

Mr K complains that HSBC UK Bank Plc ('HSBC') won't refund the money he lost after falling victim to a scam.

## What happened

Mr K's complaint was brought to us by a professional representative, but as the account is in Mr K's name, I'll refer to him throughout my decision.

In 2022, Mr K accepted a role with a new employer who promoted him via a business and employment online platform. Shortly after this, he was contacted by someone who I'll refer to as M. M said she worked in IT and wanted to expand her international connections. Mr K says they messaged for a period of time, using three different messaging apps, and that M's religious beliefs made her seem trustworthy.

M told Mr K that her uncle owned an investment company and with his help she was making money through investing. Mr K says that M shared screenshots which showed her profits. M told Mr K she used a company, who I'll refer to as L.

Mr K says L's website was very professional and he believes it may've been a clone of a genuine company with the same name. Mr K opened an account with L and made an initial deposit, which showed up in his account. This convinced Mr K that it was genuine.

Mr K had an existing cryptocurrency wallet which he used to transfer funds to his account with L. Mr K says M told him which trades to open and close and having made trades, he watched his balance with L grow.

Mr K made the following payments from his HSBC account.

Date	Pmt	Details of transaction	Amount
20.8.2022	1	Payment to cryptocurrency exchange F	£500
27.8.2022	2	Payment to cryptocurrency exchange F	£500
28.8.2022	3	Payment to cryptocurrency exchange F	£500
28.8.2022	4	Payment to cryptocurrency exchange F	£5,000
29.8.2022	5	Payment to cryptocurrency exchange F	£5,000
1.9.2022	6	Payment to cryptocurrency exchange F	£10,000
2.9.2022	7	Payment to cryptocurrency exchange F	£10,000
6.9.2022	8	Payment to cryptocurrency exchange F	£9,000
6.9.2022	9	Payment to cryptocurrency exchange F	£15,000
7.9.2022	10	Payment to cryptocurrency exchange F	£10,000
10.9.2022	11	Payment to cryptocurrency exchange F	£9,000
12.9.2022	12	Payment to cryptocurrency exchange F	£25,000
13.9.2022	13	Payment to cryptocurrency exchange F	£25,000
14.9.2022	14	Payment to cryptocurrency exchange F	£20,000
15.9.2022	15	Payment to cryptocurrency exchange F	£20,000
16.9.2022	16	Payment to cryptocurrency exchange F	£24,500

28.9.2022	17	Payment to cryptocurrency exchange F	£7,500
		<b>Total loss</b>	<b>£196,500</b>

In October 2022, Mr K tried to withdraw his balance from L, but was told he needed to place \$200,000 in a security deposit. Mr K says he became suspicious and asked M if she could help. Mr K says M reassured him, but he was still worried, so he didn't send any more money and was unable to withdraw his funds from L.

In December 2022, Mr K raised a fraud claim with HSBC asking them to refund him. HSBC declined to refund Mr K saying he'd transferred the funds to his own account with another service provider, so the loss hadn't happened when the funds left his HSBC account.

Mr K wasn't happy with HSBC's response, so he brought a complaint to our service.

An investigator looked into Mr K's complaint and partially upheld it. The investigator felt HSBC should've been concerned when Mr K made the payment on 6 September 2022 for £15,000 and that HSBC should've called Mr K. The investigator thought that if HSBC had talked to Mr K and asked open questions about the purpose of the payment, that the scam would've been uncovered. However, the investigator felt Mr K should share responsibility for his loss, as he had concerns about L's website and what he was being told. On that basis, the investigator recommended that HSBC refund 50% of Mr K's payments from payment 9 onwards and pay simple interest at 8% per year.

Mr K accepted the investigator's opinion, however HSBC disagreed with it. HSBC raised a number of points including:

- Mr K's loss happened on his cryptocurrency account, so HSBC shouldn't be liable.
- Mr K's payment activity wasn't unusual as it was an existing payee he'd previously used.
- Intervention wouldn't have made a difference as it's unclear if Mr K would've been honest in answering questions, as he wasn't honest about the purpose of a loan/s he took out in order to fund some of the payments.
- It's unclear what funds remained in Mr K's cryptocurrency account, so it's not clear what his outstanding loss is.
- HSBC had previously intervened when Mr K made payments to the same beneficiary in April 2021 and Mr K had confirmed the payments were genuine.

As the case couldn't be resolved informally, it was passed to me to review.

Having reviewed the case, I came to a different answer than the investigator. So, I wanted to explain my reasoning and give both parties a chance to provide any further evidence before I issued a final decision. So, on 5 June 2024 I issued a provisional decision.

### **My provisional decision**

In my provisional decision I said:

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

HSBC are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). However, it doesn't apply to this case as Mr K made the payments to a cryptocurrency wallet in his own name before sending the funds to the scammer. This means I can't consider the payments under the framework of the CRM Code.

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's). And I have taken that into account when looking into what is fair and reasonable in this case. But HSBC also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam.

*Should HSBC have intervened when Mr K made his payments?*

When Mr K made the first three payments, I wouldn't have expected HSBC to have had any concerns or intervened before following Mr K's payment instruction. I say this taking into account Mr K's previous account use, the fact that F was an existing payee that he had used before (although not in the previous 12 months), the size of the payments and the spacing of the payments (not in quick succession). So, I can't fairly hold HSBC liable for those payments.

However, when Mr K made the fourth payment, I would've expected HSBC to provide a written warning that broadly covered scam risks. By August 2022, HSBC should've been aware of the prevalence of cryptocurrency scams and these payments were being made to an identifiable cryptocurrency exchange. I appreciate HSBC's point that F were an existing payee, however the previous payments that Mr K had made to F were over a year prior and weren't for amounts in excess of £1,000 – whereas this payment was for £5,000. So, I think HSBC should've identified a potential scam risk and given a written warning.

The type of warning I would've expected would set out the most common types of scams HSBC were seeing, and I think it's unlikely that a general warning like this would've been impactful on Mr K.

When Mr K made the sixth payment, which was for £10,000, I think HSBC should've intervened and gone a step further than a written warning by asking Mr K open and probing questions about the payments he was making. At this point Mr K had sent £20,000 in the space of a few days, which was unusual and out of character for his account. Also, as previously mentioned, these payments were identifiably going to a cryptocurrency exchange.

HSBC say they talked to Mr K about payments he had made previously to F and feel that it's not reasonable to expect a further conversation with Mr K. But the last call they had with Mr K about F was back in April 2021, which was well over a year prior to the payments he started making in August 2022. And, based on the specifics of the payment, I think payment six warranted intervention by HSBC.

Mr K should've been asked questions like; what the payment was for (cryptocurrency investment), how he found the investment (through someone he met on a business and employment online platform) and what he'd been told about returns and who he was investing with. I can't see that Mr K was given a cover story, so I think it's more likely than not he would've honestly answered HSBC's questions. And the information that HSBC would've received, should've concerned them that Mr K was at risk of an investment scam.

If HSBC had told Mr K about cryptocurrency investment scams, what they look like, and the concerns he should have about what he'd been told – it's more likely than not that Mr K wouldn't have proceeded with the payments. On that basis, I think HSBC could've prevented Mr K's loss from payment six onwards and should refund payments six to 17 inclusive.

However, I also have to consider whether Mr K could've mitigated his loss and should share responsibility for his loss with HSBC.

### *Should Mr K share responsibility for his loss with HSBC?*

We have limited evidence of the chats between Mr K and M prior to payment seven as they used a chat app that Mr K no longer has access to. However, we do have chats between them after this point which were on a different chat app.

Mr K says that he did checks on the company (L) before investing but it appears that he researched a company with a similar name (that was genuine) but which had a different website address and contact information to what he was given by M.

Based on the evidence we've been given I think Mr K should've have the concerns with the information he was given by M, including:

- Mr K was given a website address for the company which didn't match the details he expected
- Mr K raised concerns with M about the website, saying that there was content missing off the website including in the section called "About"
- Screen shots suggest that on making a deposit, Mr K was given an immediate reward – which appears to be up to 18%. This is too good to be true and should've concerned Mr K
- The email address he was given for the investment company was @ a free email service provider. This isn't what I'd expect for a large investment company
- Mr K was receiving investment advice from someone who had contacted him out of the blue, that he didn't know.

I think Mr K should've had concerns about the information he was given right from the start, and without the chats prior to 2 September 2022, it's unclear what was discussed with M. But the chats that Mr K has provided, show some clear concerns on his behalf. I think a reasonable person would've done more checks into M, that they were who they said they were, and more checks on the company he was planning to invest with.

On that basis, I think it's fair for him to share liability for his loss with HSBC. So, HSBC should refund 50% of payments six to 17 inclusive. HSBC are also required to pay interest on the refund at 8% simple interest, calculated from the date of the payments until the date of settlement.

### *Concerns that HSBC have raised*

HSBC say Mr K's loss happened on the cryptocurrency account, so they're not liable. However, the complaint I'm considering is against HSBC and whether it's acted reasonably in following Mr K's payment instructions. For the reasons already given, I think HSBC should've identified a scam risk and intervened which would've prevented Mr K's loss.

HSBC feel if they had asked Mr K questions about his payments that he wouldn't have answered honestly, referring to the reasons he gave about the purpose of a loan he took out to fund some of these payments. However, I'm not satisfied that Mr K had a cover story and I think specific questions relating to cryptocurrency and the type of scams that HSBC would've been aware of is likely to have uncovered the scam. The reasons that Mr K gave for his loan aren't reasons that would've been viable for the cryptocurrency payments he was making. I think probing questions would've either identified issues with what Mr K was telling HSBC or suggested that it was likely he was the victim of a scam.

Mr K has provided screen shots of his cryptocurrency wallet and I haven't seen anything that suggests that Mr K retained funds from the investment in his cryptocurrency wallet that should offset the refund I'm asking HSBC to make.

My provisional decision was that I intended to uphold this complaint and ask HSBC to refund 50% of payments six to 17 inclusive and pay interest on that refund at 8% simple per year from the date of the payments until the date of settlement.

### **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.

Mr K accepted my provisional decision recommendation.

HSBC responded and explained why they disagreed with the recommendation, the points they raised included:

- Mr K misled two lenders who provided loans in order to fund some of the payments. On this basis it's more likely than not that he wouldn't have been honest if HSBC had asked questions about the payments.
- It's unlikely that even if Mr K was given a warning that he was likely the victim of a scam, it would've made a difference and he would've proceeded with making payments regardless.
- Based on the payments made and the loan/s Mr K took out, it appears he was "under the spell" of the scammer.
- When Mr K was contacted a year prior about payments made to purchase cryptocurrency, he was given a warning and told HSBC that he was very careful because his role with his employer was related to financial accounting.
- Awarding 8% interest isn't fair as the payments were either funded by savings or by loans he took out. So, Mr K should only be awarded interest at the savings account rates, or 50% of the rate charged on his loans.

I have carefully considered all of the points that HSBC have raised, however I have reached the same outcome as in my provisional decision. I'll explain why.

While Mr K may've held a financial role as part of his employment, I'm not satisfied that meant Mr K knew about these types of scams or what the warning signs would be. I appreciate that some roles may mean that consumers are more aware of scams, but I haven't seen anything that suggests this is the case for Mr K or that he was aware he could be the victim of a scam. Also, I think it's unlikely that Mr K would've taken out loans, in order to make payments, if he had realised that this could be a scam.

As HSBC have highlighted, Mr K was in contact with M for several weeks prior to making any payments. This is common in scams, whereby the scammer will build a relationship, trust and rapport with a victim before they start asking them to send money. So, while I agree with HSBC that it was likely Mr K was under the spell of the scammer, most scam victims do believe what the scammer is telling them. This is why these scams are so prevalent and have such a devastating impact on the victims. HSBC should be aware of this tactic and in response ask appropriate open and probing questions in order to identify when a customer may be at risk of financial harm from a scam.

Also, in a lot of scams, the victim may be coached on what to say in order to get the payments through, and HSBC should've been alive to this as part of the questions they

asked and the warning they gave Mr K. I appreciate that Mr K may not have given an honest reason to the loan provider, but the loan provider didn't have the same information available to them that HSBC had in relation to the series of payments Mr K had made and the payee that was involved. So, I'm not satisfied that I can safely conclude that Mr K wouldn't have provided honest answers to HSBC had they questioned him about the payments. I think it's more likely than not that HSBC would've either uncovered the scam or been concerned with the information Mr K gave them and identified that he was potentially the victim of a scam. And, if HSBC had provided Mr K with a relevant warning about these scams and the signs to look out for, I think it's unlikely that he would've ignored the warning and continued with making the payments. Mr K was responsible for repaying a large amount of money to the loan providers, and I'm not satisfied that he would've continued if he'd been appropriately warned by HSBC.

I appreciate that when HSBC called Mr K the year prior to discuss cryptocurrency payments, he decided to proceed with making payments after the conversation. However, the payments involved at that time were low value compared to the payments he made in August 2022. And, I'm not satisfied that it's reasonable for HSBC to rely on a conversation with Mr K a year prior, to negate their responsibilities for the payments made as part of this scam.

HSBC feels that awarding 8% interest isn't fair in these circumstances. However, the interest award is made to compensate Mr K for being deprived of the loss of use of his funds. Some of the funds were borrowed (around £65,000), some came from a property sale, and some were taken from savings. It's unclear what Mr K would've done with the funds if he hadn't fallen victim to this scam, so in these circumstances, I consider that 8% simple interest is a fair award.

#### *In summary*

Having carefully considered all of the evidence, I think that when Mr K made the fourth payment, it was sufficiently unusual and out of character that HSBC should've provided a written warning that set out the most common scam types. However, I think a general warning like this was unlikely to have resonated with Mr K and wouldn't have affected his decision making.

But, by the time Mr K made the sixth payment, I think HSBC should've gone a step further and intervened – contacting Mr K and asking him questions about his payment. By this point Mr K had transferred £20,000 in the space of a few days and the payments were identifiable as going to a cryptocurrency exchange. I think that all of the information Mr K is likely to have given in response to appropriate questioning by HSBC would've highlighted that he was most likely the victim of a scam and, having identified a risk, HSBC should've explained to Mr K what these scams look like and what the warning signs were. If they had done this, I think it's more likely than not that Mr K wouldn't have continued with making payments and Mr K's loss could've been prevented from that point onwards. So, HSBC should refund Mr K from payments six to 17 inclusive.

However, based on the messages between Mr K and M, I'm satisfied that he had some concerns about the information he was given and if he had completed appropriate checks in response to these concerns that he could've mitigated his loss. So, I think it's fair for Mr K to share responsibility for his loss and reduce the refund by 50%.

#### **Putting things right**

To put things right, I require HSBC UK Bank Plc to:

- Refund 50% of payments six to 17 (inclusive)

- Pay interest on the refund at 8% simple per year, calculated from the date of payments 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 K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Mr K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 August 2024.

Lisa Lowe  
**Ombudsman**