

The complaint

Mr R, via a representative, complains that HSBC UK Bank Plc (“HSBC”) have failed to refund the money he lost as part of a fake job scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr R was contacted via a messaging service by a scammer that I will call C. C persuaded Mr R that they worked for a company that I will call B that would pay him for completing a series of tasks online. Periodically, while completing these tasks, he was asked to “top up” his account by paying B.

Mr R then made around 40 transactions in December 2023 and January 2024 totalling over £70,000,000 via card payment, faster payments to crypto exchanges and current accounts he held with other providers. My understanding is that the funds were then sent to B. Mr R also sent funds from at least three other current account providers to B as well.

When Mr R attempted to withdraw the “income” that he could see on B’s ‘platform’, he was told that he had to pay an additional fee to clear a negative balance which would allow withdrawal of the “income” he had earned. At this point Mr R realised that he had been scammed.

Mr R asked HSBC to refund these payments, as he believes HSBC should have done more to prevent him from being scammed in the first place. HSBC did not agree with this.

One of our investigators looked into this matter and she thought that, given the answers Mr R gave during interactions with HSBC and his other current account providers, any intervention from HSBC would not have stopped the scam. She therefore did not uphold this complaint.

Mr R did not agree with this and therefore his complaint has been passed to me to issue a decision.

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 done so, I agree with the conclusions reached by the investigator for the following reasons.

It isn’t in dispute that Mr R authorised the disputed payments he made from his HSBC account. The payments were requested by him using his legitimate security credentials provided by HSBC, and the starting position is that HSBC ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether HSBC should have done more to prevent Mr R from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

HSBC intervened on three occasions. Once when a payment was made to a third-party software company for £2,000 in mid-December 2023 and then twice when payments were being made in early January 2024 to an account he held with another provider. I think that HSBC should have intervened more than it did and it needed to ask more probing questions and provided tailored warnings.

That said, even if HSBC had asked more probing questions and provided tailored warnings, I don't think that this would have stopped the scam. I say this for a number of reasons.

In HSBC's intervention calls, Mr R provided answers to questions that were intentionally misleading. Such as him saying that the payments were to pay a friend and was for his family in India.

In relation to the first intervention Mr R ended up cancelling the payment rather than proceeding and in the remaining two the answers he gave allowed the payments to be put through. This shows that even had a single payment not gone through Mr R would have continued to send funds to the scammer.

So, I think it likely had HSBC intervened more and asked more probing questions, Mr R would have given answers designed to allay the suspicions of HSBC. I also don't think that any warnings given by HSBC would have stopped Mr R from carrying on with the payments he was making.

Over the course of the scam Mr R was provided with a number of scam warnings from his current account providers, Mr R carried on with the payments regardless. You could argue that the warnings that Mr R was being provided did not relate to the scam that Mr R was actually falling for. But this was because of the answers that Mr R was giving when asked why he was making the payments in question.

I note that Mr R's representative has explained that further action was warranted such as invoking banking protocol. While I've considered Mr R's representative's points on this, invoking banking protocol isn't a banking requirement but rather, it is a tool that can be used by banks – where appropriate – to help identify and prevent customers from falling victim to a scam.

In the circumstances of this complaint, I think it was reasonable for HSBC not to invoke banking protocol given the answers that Mr R gave. I am also not persuaded that had the banking protocol been invoked that it would have stopped the scam as it is clear that Mr R was not going to say the real reason, he was making the payments.

It may have been the case that had HSBC asked Mr R more probing questions his answers would have not been persuasive enough to have convinced it that Mr R was not being scammed. Had this happened the payments from HSBC may have been stopped. That said what I don't think would have happened is that HSBC would have discovered exactly what Mr R was doing or would have been able to give a relevant scam warning as he at no point during any intervention with any of his account providers said that he was making the payment for releasing his earnings from an online job.

This means that, on balance, the most I think would have happened is HSBC would have stopped the payments and provided a general warning which, I don't think this would have stopped the scam as Mr R was clearly under the spell of the scammer at the time the payments were made. This is demonstrated by him actively trying to find other ways of making the payments any time a method of payment was declined. In the chats in the scam group chat Mr R can be seen asking for different ideas of payment methods as he says (I have removed the company names and replaced them with X and Y) "X had blocked my transfer suspecting scam" "Y stopped suspecting scam" "so trying other methods now" So, I think that had HSBC stopped the payments completely he would have sent payments via other means on recommendation of the scammer group chat.

Taking everything into consideration, I think that HSBC should have intervened more than it did. But even if it had intervened further, I don't think the scam would have been stopped.

I've also thought about whether HSBC could have done more to recover the funds after Mr R reported the fraud.

HSBC are under no obligation to refund the money to Mr R under the Contingent Reimbursement Model (CRM) Code as payments were made to accounts in his own name.

In relation to whether a chargeback could have been raised for the debit card payments to the crypto exchanges these payments were essentially to transfer funds from one account held by Mr R to another account, which is what happened, so I don't think there are grounds for a chargeback. So, I don't think HSBC could have recovered the funds via other means.

I appreciate this will likely come as a disappointment to Mr R, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that HSBC can fairly or reasonably be held liable for his loss in these circumstances.

My final decision

For the reasons given above, I do not 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 23 October 2024.

Charlie Newton
Ombudsman