

The complaint

Mr S complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of a scam.

Mr S's complaint has been brought by a representative on his behalf but, for clarity, I will mostly refer to Mr S in this decision.

What happened

In mid-2021, Mr S was in contact with an investment company about investing in cryptocurrency. He's said the company told him it was a good time to invest, and he knew other people had made money with cryptocurrency, so he decided to go ahead. And he then set up an account with the company and made a number of payments from his HSBC account to purchase cryptocurrency which was then sent on to the company. I've set out the payments made from Mr S's account below:

Date	Details	Amount
21 June 2021	To 1 st cryptocurrency exchange	£11,000
22 June 2021	To 1 st cryptocurrency exchange	£11,000
28 July 2021		£25,000
29 July 2021		£11,500
11 August 2021	To 2 nd cryptocurrency exchange	£10,000
17 August 2021	To 1 st cryptocurrency exchange	£426.21
17 August 2021	To 1 st cryptocurrency exchange	£4,262.10
17 August 2021	To 1 st cryptocurrency exchange	£4,262.10
17 August 2021	To 1 st cryptocurrency exchange	£4,262.10
17 August 2021	To 1 st cryptocurrency exchange	£4,000
18 August 2021	To 1 st cryptocurrency exchange	£2,800
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
25 August 2021	To 1 st cryptocurrency exchange	£5,000
31 August 2021	To 3 rd cryptocurrency exchange	£16,400
8 September 2021	To 3 rd cryptocurrency exchange	£6,700
8 September 2021	To 3 rd cryptocurrency exchange	£18,000
15 September 2021	To 3 rd cryptocurrency exchange	£25,000
22 September 2021	To 3 rd cryptocurrency exchange	£25,000
23 September 2021	To 3 rd cryptocurrency exchange	£12,000
23 September 2021	To 3 rd cryptocurrency exchange	£13,000
24 September 2021	To 3 rd cryptocurrency exchange	£16,000
24 September 2021	To 3 rd cryptocurrency exchange	£9,000
27 September 2021	To 3 rd cryptocurrency exchange	£10,000
30 September 2021	To 3 rd cryptocurrency exchange	£25,000

1 October 2021	To 3 rd cryptocurrency exchange	£25,000
2 October 2021	To 3 rd cryptocurrency exchange	£25,000
4 October 2021	To 3 rd cryptocurrency exchange	£25,000
5 October 2021	To 3 rd cryptocurrency exchange	£25,000
6 October 2021	To 3 rd cryptocurrency exchange	£25,000
7 October 2021	To 3 rd cryptocurrency exchange	£25,000
8 October 2021	To 3 rd cryptocurrency exchange	£25,000
9 October 2021	To 3 rd cryptocurrency exchange	£24,300
10 October 2021	To 3 rd cryptocurrency exchange	£25,000
11 October 2021	To 3 rd cryptocurrency exchange	£25,000
12 October 2021	To 3 rd cryptocurrency exchange	£25,000
12 October 2021	Credit from 1 st exchange	£1,078.11 credit
11 February 2022	To 1 st cryptocurrency exchange	£2,000
14 February 2022	To 1 st cryptocurrency exchange	£2,500
4 March 2022	To 1 st cryptocurrency exchange	£1,500
4 March 2022	To 1 st cryptocurrency exchange	£7,681
4 March 2022	To 1 st cryptocurrency exchange	£1,000
22 March 2022	To 1st cryptocurrency exchange	£1,000
22 March 2022	To 1st cryptocurrency exchange	£1,000

Unfortunately, we now know the investment company was a scam. The scam was uncovered after the company told Mr S he needed to pay in a significant further amount before he could withdraw the profit he'd been told he'd made. Mr S then became suspicious and reported the payments to HSBC.

HSBC didn't agree to refund the money Mr S lost, so he referred a complaint to our service.

I sent Mr S and HSBC a provisional decision on 5 July 2024, setting out why I was intending to uphold the complaint in part. An extract from my provisional decision is set out below:

"Are the payments Mr S made covered by the CRM code?"

I've first considered whether the CRM code applies to the payments Mr S made here.

The Lending Standards Boards Contingent Reimbursement Model (the CRM code) is a voluntary code, which HSBC has signed up to. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scams. But it only covers payments where a customer paid funds to another person for what they thought were legitimate purposes but which were in fact fraudulent, and doesn't apply to card payments.

Some of the payments Mr S made here were card payments, and so the CRM code doesn't apply to these payments.

And the rest of the payments Mr S made here appear to have been made to accounts in his own name with other banks or cryptocurrency exchanges. Mr S's representative has said Mr S didn't have control over these other accounts, but they haven't been able to provide any evidence of how they know this. And HSBC's notes show Mr S said he had access to the accounts with the cryptocurrency exchanges. So, based on this and how these types of scams usually operate, I think it's likely Mr S did have access to these accounts – or was at least aware of the accounts in his own name.

And so, as the payments were sent to accounts in his own name, they weren't made to another person and the way the CRM code is written means I don't think it applies to these payments.

So I don't think any of the payments Mr S made here are covered by the CRM code.

Did HSBC do enough to protect Mr S?

Mr S accepts he made the payments out of his HSBC account himself. So while I recognise he didn't intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that he is liable for the payments and HSBC doesn't have to refund them.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think 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 made 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.*

So I've also considered whether HSBC should have identified that Mr S was potentially at risk of fraud as a result of any of these payments, or otherwise done more to protect him.

The first payment Mr S made as a result of this scam wasn't for a significantly larger amount than a number of other payments made out of his account in the previous months. And it didn't leave the balance of his account at a particularly unusual level. So I wouldn't have expected HSBC to identify that Mr S could be at risk of financial harm as a result of it, and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing it to go through.

But when Mr S tried to make the second payment here, for £11,000 on 22 June 2021, HSBC clearly identified a risk – as it contacted Mr S to ask him a series of questions about the payment. And so I've considered whether HSBC did enough when it contacted Mr S to protect him.

I've listened to recordings of the phone conversations HSBC had with Mr S around this payment. In the calls, HSBC asks how he found out about the investment company, but Mr S says he can't remember. HSBC then asks who opened the account and registered on the website, and Mr S says he did it together with people from the investment company. HSBC also asks if Mr S has received any returns on the investment, and he answers that he apparently has. And HSBC asks if Mr S is trading the cryptocurrency himself or if someone else is doing it, and Mr S says the investment company does the trading on his behalf.

HSBC then gave Mr S a warning that scammers may show a website showing fake earnings, that investing in cryptocurrency is very risky, and that if someone has contacted you and offered to open an account and trade on your behalf then it is a scam.

But, while HSBC did give those warnings, Mr S also told it he wasn't sure how he had first made contact with the investment company, that he was being guided through the investment by the company, and that the company was trading on his behalf. So the circumstances Mr S told HSBC about the investment he thought he was making closely matched both the circumstances it warned him would be a scam and features often seen in investment scams. And so I think HSBC should have had significant concerns that Mr S was likely the victim of an investment scam following this phone call with him, and I don't think the questions it asked or the warning it gave him in the call were sufficient to address these concerns.

I think HSBC should have warned Mr S that the circumstances he had described closely matched those often seen in investment scams, and that he was therefore likely the victim of a scam. I think it should have suggested some steps he could take to check whether the investment was legitimate, such as trying to withdraw all the money he had invested. And I think it should have suggested he not invest further until he had taken those steps.

And as HSBC is the financial expert in this situation, I think it's warning would likely have carried significant weight with Mr S. If it had given him this warning, I think Mr S would likely have followed HSBC's advice, the scam would then have been uncovered, and Mr S wouldn't have made this payment or any of the future payments.

So if HSBC had done more to protect Mr S before he made the payment of £11,000 on 22 June 2021, as I think it should have, I don't think Mr S would have lost the money from this payment or any of the later payments. And so I think it would be fair for HSBC to bear some responsibility for the loss Mr S suffered from this point onwards.

Should Mr S bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr S to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where he was given access to a trading platform which appeared to show trades being made and profit he was earning, I do think there were a number of things about what was happening that should have caused him significant concern.

Mr S doesn't appear to have done any significant checks into who the investment company was, and doesn't appear to have received any documentation or paperwork from it about his investment. And given the amount of money he was investing, I think it's reasonable to expect Mr S to have done more checks into the company and to have been concerned about the lack of documentation he received.

The investments Mr S thought he was making appear to have required his money to be used to purchase cryptocurrency, which was then sent on to the investment company and used to make trades. But, from what I've seen, Mr S doesn't appear to have had a particularly clear understanding of why this process was necessary or how the investment worked. And he appears to have lost access to and control over his money at some point during this process – which I think should have caused him significant concern.

While I don't think HSBC did enough to protect Mr S, it did warn him that investing in cryptocurrency was very risky and that, if someone is trading on your behalf, it is a scam. And as the investment company was trading on his behalf, I think this warning should have

caused Mr S significant concern – but he continued to make a significant number of payments towards the investment after this.

The investment company also later asked Mr S to lie to his banks about the reasons he was taking out loans. And I think being asked to lie to his bank and hide the true nature of the investment he was making should also have caused Mr S significant concern.

Mr S's representative has argued that his judgment and short-term memory were significantly affected by medical conditions and treatment he received around the time of the scam. So they've said HSBC should have realised this and taken more steps to protect him, and that it wouldn't be fair to hold him responsible for the loss he suffered. But while my intention isn't to diminish the severity of his conditions or underestimate the impact the treatments have had on him, I'm not satisfied that his judgment at the time of the payments was such that HSBC should have taken significantly different action or that it wouldn't be fair to hold him partly responsible for the loss he suffered.

The statements for Mr S's account show he was receiving monthly credits from his employer throughout the entire period the payments were being made. And the payments varied significantly in size from month to month, which suggests they were for work being done around that time. So as Mr S appears to have been carrying out a significant amount of work for his employer throughout the time the payments were made towards the scam, I don't think it's likely his judgment and capacity were affected as severely as his representative has suggested.

Mr S was able to have a number of telephone conversations with HSBC during the period the payments were being made. And in these conversations he was able to answer questions about what he was doing and to have discussions about the risks of sending money. So I don't think these calls suggest that his judgment or capacity were as significantly affected, or that HSBC should have been aware of it.

A significant number of the payments made out of Mr S's HSBC account were also funded by payments into his account from his wife's account. And his wife has said she was aware of the payments made from her account to Mr S's account, and that at the time she was trusting him to both look after their investments and to manage building work they were having done at their property. But if Mr S's wife was still trusting him with such large amounts of money and to look after their investment at the time, I think this suggests that he still had sufficient capacity to consider the risks of this scam – or, at least, that any loss of capacity wouldn't have been obvious to HSBC and it wouldn't have acted unreasonably in not taking significantly different action as a result.

I sympathise with the position Mr S has found himself in. He has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused him significant concern, and I don't think he did enough to overcome those concerns. And I don't think the evidence suggests his circumstances were such that HSBC should have taken significantly different action or that it wouldn't be fair to hold him partially responsible for the loss he suffered. And so I think it would be fair for Mr S to bear some responsibility for the loss he suffered.

Summary

As I think both Mr S and HSBC should bear some responsibility for the loss he suffered, I think it would be fair for HSBC to refund 50% of the money Mr S lost – from the second payment onwards.

Mr S's statements also show he received a credit from the first cryptocurrency exchange he sent money to of £1,078.11 on 12 October 2021. And as this appears to be money he received back from the investment, I think it would be fair for this amount to be deducted from the amount he lost when calculating how much HSBC should now refund."

I said I'd consider anything further Mr S and HSBC sent in following the provisional 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.

HSBC said it accepted the provisional decision. Mr S, via his representative, responded with a number of points which I will address below.

Mr S's representative argued that a representative from HSBC visited Mr S to arrange a life insurance policy some time before the scam took place, and Mr S's medical conditions and the treatment he was undertaking were fully declared. So HSBC should have been aware of his circumstances and taken extra care to protect him. And as I said in the provisional decision, my intention isn't to diminish the severity of his conditions or underestimate the impact the treatments have had on him. But I'm still not satisfied that Mr S's judgment at the time of the payments was such that HSBC should have taken significantly different action.

From what I've seen, Mr S appears to have been carrying out a significant amount of work for his employer throughout the time the payments were made to the scam. And his wife was still trusting him to look after their investments and manage building work they were having done at their property. But if Mr S's judgment was so seriously affected that it should have been obvious to HSBC that it needed to take extra care to protect him, as his representative has suggested, I don't think these things would also have been happening.

So I still think this suggests Mr S still had sufficient capacity to consider the risks of this scam – or, at least, that any loss of capacity wouldn't have been obvious to HSBC and it wouldn't have acted unreasonably in not taking significantly different action as a result. And so I still think it would be fair for Mr S to share some of the responsibility for the loss he suffered.

Mr S's representative also argued that allocating 50% of the responsibility to Mr S treated him as if he was a completely healthy customer, and that HSBC should have an increased share of responsibility. But while I appreciate that Mr S's conditions would've caused him significant difficulty around the time, as I explained above, I still feel he had sufficient capacity to consider the risks of the scam and that there were a number of things about what was happening that should have caused him significant concern.

I think it would be fair for both Mr S and HSBC to bear some responsibility for the loss Mr S suffered. And apportioning responsibility in cases like this is not an exact science, so I understand why Mr S's representative feels HSBC should take an increased share. But, based on what I've seen of the circumstances here, I think the responsibility for the loss rests relatively equally between Mr S and HSBC here, and so it would be fair for HSBC to refund 50% of the loss I've found it bears some responsibility for.

Mr S's representative also highlighted examples of HSBC missing deadlines and not formally updating Mr S on his complaint, as well as of the FCA recognising failures by HSBC to treat customers properly. But I've already set out that I don't think HSBC acted unreasonably in not taking significantly different action as a result of Mr S's medical conditions, and I don't think any failures by HSBC to identify or appropriately consider customers' vulnerabilities in other cases affects the action I think it should have taken here.

And while HSBC missed deadlines in its responses to Mr S, I can only award compensation for distress and inconvenience suffered by Mr S himself, not by his representative. And I don't think these delays caused Mr S distress or inconvenience on a level to warrant financial compensation.

Finally, Mr S's representative said that two payments were missing from the table of payments I set out in the provisional decision. And I agree that these payments were incorrectly omitted from the table I set out in my provisional decision. So they have now been included in the table I set out above (highlighted in bold) and in the redress calculations set out below.

Overall then, I still think HSBC should have done more to protect Mr S before the payment of £11,000 on 22 June 2021 and that, if it had done, I don't think Mr S would have lost the money from this payment or any of the later payments. So I think it would be fair for HSBC to bear some responsibility for the loss Mr S suffered from this point onwards. And I also still think it would be fair for Mr S to bear some responsibility for the loss he suffered.

So I think it would be fair for HSBC to refund 50% of the money Mr S lost – from the second payment onwards.

I also still think it would be fair for the credit Mr S received from the first cryptocurrency exchange, of £1,078.11 on 12 October 2021, to be deducted from the amount he lost when calculating how much HSBC should now refund.

My final decision

For the reasons set out above, I uphold this complaint in part and require HSBC UK Bank Plc to:

- Refund Mr S 50% of the money he lost as a result of this scam, from the second payment onwards – totalling £289,257.70
- Pay Mr S 8% simple interest on this refund, from the date of the payment until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 October 2024.

Alan Millward
Ombudsman