

The complaint and what happened

Mr K complains HSBC UK Bank Plc won't reimburse funds he lost as a result of a scam.

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- Mr K was persuaded to invest with a trading business. He made payments totalling £4,000 between July and September 2020. The payments were made via a crypto-exchange 'ask4bit'. He realised something wasn't right when the trader kept trying to persuade him to invest more; he did some research and realised it was a scam and so asked for his money back, to no avail.
- He asked HSBC to chargeback the payments. HSBC did make chargeback attempts but they were defended by ask4bit, which was able to demonstrate Mr K's deposits were exchanged for cryptocurrency and forwarded onto a wallet. HSBC agreed when sending its file that there had been delays in the chargeback process and poor communication, so it offered Mr K £75 compensation.
- Our investigator found the offer fair for the delays and poor communication. But she didn't think HSBC had done anything wrong when processing the payments or attempting recovery; she didn't find the transactions so unusual or suspicious that they ought to have triggered its security systems. And she was satisfied HSBC had fairly attempted a chargeback and that Mr K didn't have rights under S75 of the Consumer Credit Act 1974 to hold HSBC equally liable for the transactions.
- Mr K didn't agree with the outcome reached. He says he never set up an account with ask4bit – whose website can't be accessed – and he never asked for money to be exchanged into cryptocurrency or be sent to a wallet. He has provided evidence to show his deposits were made through the trading business and that it had charged back the transactions to ask4bit.

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 would like to reassure the parties that although I have only set out the key points, I have read and considered what's been provided. Having done so, I agree with the outcome reached by the investigator for the following reasons:

- A chargeback is a voluntary scheme run by card providers, such as Visa and Mastercard. That process is subject to the rules of the scheme and we wouldn't expect a bank to pursue matters to final arbitration if there was no prospect of success. HSBC did attempt a chargeback for Mr K's lost funds, and when that wasn't successful it tried again. The evidence provided by ask4bit showed Mr K's funds were exchanged for cryptocurrency and sent to a wallet; therefore the service would be considered provided and there was little prospect of success. I don't find HSBC was being unfair or unreasonable when not pursuing that further. I accept Mr K has provided screenshots suggesting the trader has returned funds to ask4bit. But given the trader is reported to be a scam, it's highly unlikely the screenshots are a true

reflection of the trading account; rather they are probably a fabrication. Overall, I'm not persuaded HSBC ought to have done more.

- In order to have a valid claim against HSBC under s75 of the Consumer Credit Act 1974, there needs to be a valid debtor-creditor-supplier relationship. Mr K was trading with Finantik. But his funds didn't go directly there – rather they went via ask4bit and were exchanged into cryptocurrency before being forwarded on. I accept Mr K may not have set up a wallet with ask4bit himself, nor provide a personal instruction for funds to be changed into cryptocurrency. Nevertheless, that is what happened when Mr K made a deposit through the platform. I'm afraid that means there is an additional party in that chain which in turn means there isn't a valid debtor-creditor-supplier relationship and so s75 doesn't apply.
- Under regulations and in accordance with general bank terms and conditions, banks should execute authorised payment instructions without undue delay. The starting position is that liability for authorised payments rest with the payer, even where they are tricked into making those payments. There is no dispute that Mr K made and authorised the payments.
- However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams, so far as is reasonably possible. If in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.
- Mr K made a total of three transactions; £1,000 in July, £1,000 in August and £2,000 in September 2020. The transactions were spaced apart with a number of weeks in between each. I accept they are fairly large sums but spending large sums on a credit card isn't that unusual. I have also considered the funds were sent to a cryptocurrency exchange. And it is true that scams involving cryptocurrency are quite prevalent. However, buying cryptocurrency was and is a legitimate exercise. I don't find the pattern of payments were so unusual or uncharacteristic such that they would have looked suspicious or therefore, that HSBC's fraud alert systems ought to have triggered.
- I appreciate Mr K has lost money to a scam. Despite my natural sympathy for the situation in which he finds himself, I don't find HSBC did anything wrong in following his payments instructions. I do, however, agree with the investigator that £75 is a fair reflection of the impact on Mr K of not being able to contact HSBC and for the delays in the chargeback process.

My final decision

For the reasons given, my final decision is that HSBC UK Bank Plc has made a fair offer to resolve this complaint. I require it to pay Mr K £75 if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 October 2022.

Claire Hopkins
Ombudsman