

The complaint

Mr B is unhappy that HSBC UK Bank Plc (“HSBC”) hasn’t reimbursed him after he was the victim of a scam.

What happened

Mr B was looking for investment opportunities online and made contact with a company he believed was suitable for his needs. He later discovered the company, and the individuals he’d been working with, were scammers.

Under the instruction of scammers he set up accounts with third party crypto currency trading platforms as he believed this was how he would be investing his money. Mr B downloaded software that allowed the scammers access to his device and all of his accounts. After his initial investments, the scammers started to tell Mr B his profits were at risk unless he continued to transfer more money. In total Mr B paid the scammers £57,670.48 in seven separate payments, the largest of which was around £12,000.

Eventually Mr B grew suspicious and refused to send any more. He then found he was unable to withdraw any of the funds at which point he realised the situation was a scam.

He reported the matter to HSBC but it didn’t feel it was liable for Mr B’s loss. Mr B brought the complaint to our service and our investigator didn’t uphold the complaint. As Mr B didn’t accept this the complaint has been passed to me to make a final 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.

There’s no dispute the payments Mr B made were ‘authorised’ even though he was the victim of a scam. The payments were made by him and under the Payment Services Regulations (PSRs), and the terms and conditions of his account, he’s presumed liable for the loss in the first instance.

But, I’ve also taken 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. As such I think HSBC should fairly and reasonably have measures in place to look for and identify transactions that are significantly unusual, out of character or otherwise might indicate someone had been the victim of a scam. And, where it reasonably ought to have identified such a transaction, it might be appropriate for it to carry out further checks to satisfy itself its customer isn’t at risk.

There isn’t a set formula for what should be considered significantly unusual or a sudden change in behaviour. There are a number of different factors that need to be taken into account. What I’d expect HSBC to be on the look out for as a starting point are any transactions that seem significantly unusual based on the use of the account in the months leading up to the scam payments.

In the months leading up to the scam Mr B made a payment of over £13,000 and another of £20,000. Neither of these payments are disputed. So before he started paying the scammer I think there was somewhat of a pattern established where Mr B made high value transactions from his account from time to time.

Mr B has said the payment for £20,000 was stopped by HSBC and it asked him further security questions about this, which supports that it does in fact have measures in place to intervene when it recognises transactions as significantly unusual. And as Mr B was able to answer its questions sufficiently it allowed the payment to be made. I think this conversation and the assurances Mr B provided reinforced that from time to time, Mr B used his account for legitimate high value transactions. Around four months later, he made his first payment to scammers, which was for just under £12,000 – considerably less than the £20,000 he'd confirmed was genuine. Given his overall use of the account during this period, I think it's reasonable HSBC didn't carry out any additional checks into this payment before it was sent.

Mr B has argued that in early November 2020 he sent around £16,000 to scammers within two days across three transactions. He feels these transactions combined were a similar value to the £20,000 payment so he feels they also ought to have been stopped. I wouldn't expect HSBC to stop every transaction over a certain value as this isn't the only factor that indicates someone might be at risk. Especially when, as is the case here, a customer does legitimately use their account for larger value transactions. I'd also add that in the case of these three payments, their combined value only would've been apparent on the second day, when the third transaction was made at which point the previous two had likely already left Mr B's account.

I don't think it's the case that two transactions sent in one day should automatically be stopped. There are legitimate reasons someone might want to pay a certain merchant twice in a day, for example, when someone is legitimately investing or gambling. And these three transactions, even in the case of the two sent on the same day, aren't so close together I'd expect HSBC to have been concerned by their frequency. The transactions don't indicate someone was trying to access Mr B's money as quickly as possible.

Mr B has also suggested HSBC ought to have stopped any payment being made to a crypto currency trading platform as these platforms are frequently used in scams. But I don't agree. I wouldn't expect HSBC to stop every payment any customer sends to a trading platform as these are often legitimately used. And whilst I would expect it to have knowledge of the use of this type of account in fraud and scams, once again, there a number of factors I'd expect it to consider when looking for signs its customer is at risk, not simply take one potential risk factor and apply this to every individual transaction on every customer account. HSBC has to strike a balance in monitoring accounts and preventing fraud with not unduly hindering a customer's general use of their account.

Once the matter was reported I can see HSBC did contact the beneficiary's banks to request a return of the funds, but all the responses it received were that funds would not be returned. I wouldn't have expected HSBC to have done more in this case.

I'm very sorry to hear of what's happened to Mr B, I can see it's been very difficult for him. But overall I don't think HSBC needed to intervene when he made the payments he did to scammers. So I don't think it missed an opportunity to prevent the payments being made and therefore isn't liable for his loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 September 2022.

Faye Brownhill
Ombudsman