

The complaint

Ms M complains that HSBC UK Bank Plc (“HSBC”) will not refund card payments she believed were going to a legitimate trading company which she says turned out to be a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In December 2020, Ms M made several payments to a cryptocurrency exchange which I will refer to as C in this decision. These payments were made using Ms M’s HSBC’s debit card and amounted to approximately £2,900. Ms M says that at the time she believed that the converted payments she made to C would then go to her investment platform account held by an investment trading company. Ms M says that a third party she had met and trusted, ultimately, enticed her into doing everything mentioned.

Ms M says she later discovered she had been scammed and lost all her money. She contacted HSBC about this and asked it to recover her losses. Initially, HSBC credited the funds to Ms M’s account temporarily. However, after it had raised a chargeback against C which was defended – it reversed the refund. Unhappy with this, Ms M raised a complaint which she referred to our Service. Part of her complaint relates to customer service-related issues.

After Ms M referred her complaint to this Service, HSBC confirmed its position had changed regarding the customer service element of Ms M’s complaint and offered £150 to reflect this.

One of our investigators considered Ms M’s complaint. He thought that HSBC acted fairly in the way it dealt with Ms M’s chargeback claim. He also thought the £150 HSBC offered was fair.

As Ms M did not accept the investigator’s findings, this matter has been passed to me to make a decision.

What I have 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 am upholding this complaint in part for the reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Chargeback is an entirely voluntary scheme, which means banks are under no formal obligation to raise a chargeback claim. The scheme operator can ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the scheme – so there are limited grounds on which a chargeback can succeed. My role is to determine whether the regulated card issuer (in this case, HSBC) acted fairly and reasonably in its decision not to pursue a chargeback on behalf of its cardholder (in this case, Ms M).

Ms M made the payments concerned to C, which is a cryptocurrency exchange. The service they provided her was the purchase of cryptocurrency. Because of this, if HSBC had continued with the chargeback claim to arbitration, I am persuaded it would have likely been unsuccessful. I say this because the alleged scammer was not a party to the card payments, so Ms M could not have a valid claim against the legitimate merchants (C) she paid. C provided their services as intended, which was to purchase cryptocurrency. The subsequent transfer of this would not give rise to a valid chargeback claim.

I do acknowledge Ms M feels this matter is about the person who she says scammed her, rather than C. However, because of the way chargeback operates, I can only consider the recipient of Ms M's payments and whether they provided the service concerned (addressed above).

It follows that I find HSBC acted fairly and reasonably by not continuing with the chargeback process on Ms M's behalf, as C would have likely been able to defend the claim at arbitration successfully.

Ms M says HSBC could have done more to stop the payments leaving her account – particularly given her account activity. Having considered this, I am unable to agree. I say this because I am not persuaded that HSBC ought to have intervened regarding the payments. That is, I am not persuaded HSBC ought to have been alerted to the payments, delayed them and asked questions to get to the bottom of what was going on. I say this because I do not find the payments were remarkable in any way to be cause for concern.

Turning now to the customer service issues Ms M has raised.

I have taken into account the trouble and upset Ms M says she experienced as a result of how HSBC dealt with her complaint – particularly relating to delays. I have weighed this against the process I would have expected HSBC to follow in circumstances such as those in Ms M's case. In doing so, I find that HSBC could have done better in terms of communication and timeliness. With this in mind, I am satisfied that the £150 HSBC has offered fairly reflects the trouble and upset it caused Ms M in this regard.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part. I therefore direct that HSBC UK Bank Plc:

- Pay Ms M £150 compensation (if it has not done so already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 18 October 2022.

Tony Massiah
Ombudsman