

The complaint

Mr D complains HSBC UK Bank Plc won't reimburse £25,750 he lost when he fell victim to an investment trading scam. He was led to believe he was investing in and trading with Bitcoin.

Our investigator upheld the complaint in part. She was satisfied HSBC ought to have intervened on the fourth payment made; it was the second payment to the same merchant in one day and was unusual spending for the account. She asked it to reimburse the transactions which had been made from Mr D's credit card account from that point on – totalling £22,500. She also endorsed HSBC's offer of £250 compensation for the delays it caused in handling Mr D's claim.

Mr D accepted the outcome, but HSBC did not. It didn't think if it intervened on the fourth payment that Mr D would have heeded any warning. It also felt that any compensation should be reduced by 50% as Mr D doesn't appear to have carried out any due diligence and so has contributed to his losses.

Mr D also complains about losses suffered from another HSBC account to the same scam. That matter is being decided separately by me. But as both cases involve the same scam, neither party should be surprised by any similarities in the decisions.

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.

Although I have only briefly summarised the background and arguments above, I have read and considered what's been provided. Having done so, I agree with the investigator's findings for the following reasons:

- Mr D saw an advert on television to trade with Expert Trader, which was endorsed by a well-known consumer champion. He was sent a link and was told to trade in Bitcoin. Mr D looked at their website and was persuaded Expert Trader were genuine.
- Mr D authorised all of the transactions, even if he was tricked into doing so. And whilst he didn't intend for his money to go to scammers, he is initially presumed liable for the loss. There also doesn't appear to be any dispute he has been scammed. The consumer champion has come out publicly to say he doesn't endorse these types of merchants. And there is a lot of people reporting similar tactics to those Mr D experienced, on forums, and who also lost money.
- HSBC is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud or scams; and in some situations, make additional checks before processing payments or decline them altogether to protect customers from possible financial harm from fraud or scams.
- I have looked at the operation of Mr D's account in the months leading up to the scam. I think it fair to say Mr D doesn't usually spend large sums of money from the account.

However, I do need to bear in mind that it isn't unusual for credit cards to be used precisely for that purpose - larger spends. Given that, I agree with the investigator that I don't believe the first three payments ought to have triggered HSBC's fraud alert systems. However, I agree the fourth payment for £3,000 was unusual for the account, even if the previous payments had been spaced apart. This was the second sizeable transaction to the same merchant on the same day. And it was to a cryptocurrency exchange. Furthermore, the payments had been increasing in size, since the first payment made just over a month before. This is typical of this type of scam. Taking all of this into account, I'm satisfied HSBC's systems ought to have triggered an alert and payments paused pending further intervention – such as making enquiries or giving a scam warning.

- It appears HSBC might have intervened on the final payment, but it isn't clear why or that Mr D was questioned about it. But I've not delved into this more, as that payment was over four months later, and I think it ought to have intervened much sooner.
- Had HSBC carried out its due diligence and duties and asked Mr D about the payments, I have no reason to doubt he would have explained what he was doing. It could have provided information on the steps a customer can take to ensure, so far as is reasonably possible, they are dealing with a legitimate merchant. And it could have drawn on its knowledge about the high-risk associated with crypto-assets, the potential for fraud and provided a scam warning. After all, Action Fraud and the regulator has been reporting on this type of scam since 2018, intelligence it ought to have taken notice of. I'm satisfied Mr D would have listened to a warning from his trusted bank, particularly as this was early on in the scam and three months before Mr D was able to make a withdrawal of £2,000 (into his current account). I don't think he was so far under the spell that he would have continued regardless. I'm satisfied a warning from HSBC would likely have exposed the scam and caused Mr D to stop trading, thereby preventing further loss of £22,500.
- I've thought carefully about whether Mr D bears some responsibility for his losses, as HSBC has argued. This is particularly important given it doesn't appear Mr D did much, if any, independent research into the merchant. However, having conducted my own research, aside from a handful of comments on a forum about people's dealings with this business, there was very little from the time to indicate it was operating a scam. So I'm not persuaded Mr D's lack of due diligence has led to his losses.
- I agree with the investigator that Mr D didn't enjoy rights under s75 of the Consumer Credit Act 1974 or through a chargeback, as Mr D didn't pay the scam merchant directly. However, I do agree that the offer made by HSBC for its delay in handling the claim is fair - £250. Mr D had reported the scam across both of his accounts at the same time, but this was left for many months without investigation which necessitated him chasing for a response.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to:

- Reimburse Mr D £22,500 representing his loss from the fourth payment onwards; and
- Pay Mr D £250 compensation for the delays in handling his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 January 2023.

Claire Hopkins
Ombudsman