DRN-3773500

The complaint

Mr C complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him from loss when he became the victim of a scam and pay him back the money he lost.

What happened

In August 2021, Mr C came across an advert on Instagram regarding investment in cryptocurrency.

After sending a message in response to the advert, Mr C was persuaded to purchase cryptocurrency from 'M' and 'B' (legitimate businesses selling cryptocurrency) and transfer the funds to the scammer. In total he made nine payments, totalling £27,662.02.

Once Mr C realised he had been the victim of a scam, he reported this to HSBC and made a complaint.

HSBC didn't uphold his complaint, so Mr C brought his complaint to this Service.

Our Investigator considered the complaint. They felt that while HSBC may not have been able to prevent some of the loss that Mr C had suffered, it could have intervened from the fifth payment he made and prevented the loss from this payment onwards.

Mr C accepted the Investigators view, but HSBC did not. It said that Mr C should be liable for 50% of the loss from the fifth payment onward due to his own contributory negligence.

Our Investigator wasn't persuaded to change their view, so 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.

Having done so I've decided to partially uphold Mr C's complaint for materially the same reasons as our Investigator. I'll explain why.

Firstly, I need to consider if Mr C was a victim of a scam – and having reviewed the evidence I think that this most likely that Mr C was the victim of a scam. While Mr C used his HSBC debit card to purchase cryptocurrency from two legitimate sellers, he was persuaded to do so by the scammers – and the cryptocurrency was transferred to a crypto-wallet not within Mr C's control.

I've listed the payments that Mr C made below.

Date	Merchant	Payment type	Amount
10/08/2021	M	Debit card	£388.46
11/08/2021	M	Debit card	£467.10
11/08/2021	M	Debit card	£466.58
18/08/2021	M	Debit card	£3211.30
18/08/2021	M	Debit card	£5952.59
18/08/2021	B	Debit card	£3788.98
19/08/2021	M	Debit card	£3252.04
20/08/2021	M	Debit card	£5945.90
23/08/2021	M	Debit card	£4189.07

Recovery of Mr C's payments

After Mr C made his payments, I wouldn't expect HSBC to do anything further until it was notified of the scam. As Mr C made his payments by debit card, there was one method of potential recovery of the payments – instigating a chargeback to the merchant. Chargeback is a process by which disputes are resolved between card issuers (in this instance HSBC) and the merchants ('M' and 'B').

However, even if HSBC had attempted recovery through a chargeback, this would not have been successful. This is because both M and B are legitimate businesses and provided the services that Mr C had requested of them – the purchase of cryptocurrency. The subsequent transfer of the cryptocurrency to a different wallet (which Mr C made as a result of the scam he fell victim to) is therefore a separate matter – and so a successful chargeback would never have been possible – and so I don't think that these payments were recoverable once they had been made.

Should HSBC have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that HSBC reasonably ought to have prevented some or all of the payments Mr C made in the first place – therefore preventing the loss before it happened.

Mr C authorised the scam payments in question here – he was tricked into instructing HSBC to make the payments – so I accept that the payments he made were 'authorised payments' even though Mr C was the victim of a scam. So, while Mr C never intended the payments to go to the scammers, he is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, HSBC should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 its customers were at risk of fraud (amongst 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; and
- 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.

This leads me to consider the payments that Mr C has made – and if HSBC should have intervened.

The first four payments

Having considered the first four payments Mr C made, I'm not persuaded that HSBC should have become involved at this point. I say this because as I've explained above, there is a balance to be struck. I've reviewed Mr C's account transactions and activity and I don't think that they are sufficiently unusual or uncharacteristic to have triggered HSBC into taking extra steps before processing Mr C's payment instructions.

The fifth payment

This was the second payment Mr C made in the same day – taking the daily total to over £9,000. I think that this payment should've triggered a response from HSBC in order to meet its obligations I've set out above. With this in mind, HSBC should reasonably have contacted Mr C to establish whether the transaction posed any possibility of placing Mr C in financial harm before processing it. But it did not do so.

Had HSBC contacted Mr C, I would've expected it to have questioned Mr C about the payment – including what the payment was for, and the surrounding context – and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

I've seen nothing to suggest that Mr C had been coached, or told to lie about the payments he was making – so I think that had HSBC acted as I would've expected, it would quickly have uncovered that Mr C had made contact with the scammer through a social media platform, and that he had been persuaded to purchase cryptocurrency and transfer it to a trading platform. At this point the scammer had already 'shown' that Mr C had made profit from the previous payments he had been made.

By January 2019, HSBC should already have had a good understanding about how scams like the one Mr C fell victim to work – including that a consumer is often persuaded to move money from one crypto-wallet in their own name to the scammer.

Mr C had already exercised some caution by asking for documentation (he was provided with a trading license) and researching the company online. He was also persuaded by the professional looking trading platform. So had HSBC given him a warning – including that the information he's been given could easily be manipulated by the scammer and that what he had told them bore all the hallmarks of a sophisticated scam – I think that he would've taken this warning seriously and not taken the risk of further 'investing'.

So, I think that HSBC could've prevented Mr C's loss from payment five onwards.

Should Mr C bear some responsibility for the loss

I understand that HSBC thinks that Mr C should bear some of the responsibility by way of contributory negligence – it says that Mr C appears to be a sophisticated individual – and there was no detail about why Mr C suddenly chose to invest such large sums in a short period.

It also says that even if it had spoken with Mr C when he made payment five, it does not accept that Mr C would've more likely preferred what the scammers had to say than heed a generic warning from his bank.

It goes on to say that there were sufficient 'red flags' arising out of the odd circumstances, including that Mr C found the merchant on a social media platform and that he was careless – ignoring the suspicious circumstances in favour of high returns. It does not see Mr C's actions as that of a reasonable person.

I've thought about what HSBC has said – but I disagree. As I've explained above, Mr C did do some of his own checks - so this shows that he did take some care before parting with his money – and while HSBC may say that Mr C seems to be a 'sophisticated individual' HSBC were the experts here – and had more knowledge on the intricacies of these types of scams. And while it may be that Mr C would not have heeded HSBC's warning – he doesn't appear to have been coached or incited to lie to his bank – and HSBC never provided him with such a warning anyway, so I fail to see how it can conclude that he would have likely ignored it.

It follows that I am satisfied no deduction for contributory negligence should be made in this case.

Putting things right

As I've explained above, I don't think that Mr C would've made payment five, or the subsequent four payments if HSBC had done what it reasonably ought to.

I can't reasonably ask HSBC to pay more than, as I've explained, I don't think I can fairly hold them responsible for the loss of the first four transactions.

Therefore, HSBC should refund Mr C £23,128.58.

I've noted that HSBC applied transaction fees to these payments – so it should also refund these from payment five onwards as these would not have been applied but for HSBC's failing.

I understand that Mr C funded his current account in order to make the payments from his savings account – so HSBC should also pay interest on this amount at the rate Mr C would've received on his savings. If it doesn't have this information, it should gather this from Mr C.

I understand Mr C says that he has suffered distress and inconvenience. But while I am sympathetic in cases like this where someone is cruelly scammed out of funds and recognise there is an emotional impact, I am mindful that the scammers were ultimately to blame here. And while I have concluded that HSBC should have intervened and prevented payment five onwards, Mr C would still have been the victim of a scam and suffered distress and inconvenience – albeit he would've lost less money. So, I'm satisfied the compensation I've set out is fair in this case, and I don't make any additional award.

My final decision

I partially uphold this complaint. HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 March 2023.

Claire Pugh
Ombudsman