

The complaint

Mr H complains that HSBC UK Bank Plc (HSBC) has refused to refund the money he has lost following him falling victim to a scam.

Mr H is being represented by a third party. To keep things simple, I will refer to Mr H throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr H met a woman (X) via an online dating application. Mr H got to know X by initially chatting through the app and then via WhatsApp. Having built trust with Mr H, X started to talk about crypto investments she was involved in. Mr H explained he was interested, and X walked him through how to make an investment himself.

X explained that Mr H would have to send his funds to a Stic wallet and that he would need to use the legitimate cryptocurrency exchange Binance to do this. X helped Mr H setup these accounts as he had not had experience doing this before and once Mr H had transferred the funds X helped him make the deposits into investments.

X also had a video call with Mr H, and he tells us the person he spoke to appeared to be the same person he had met via the dating app.

Mr H was able to see his account online and that his investment was growing. By the end of the scam Mr H's online account was showing a balance of over £2,000,000.

Mr H made the following payments to Binance via his Visa debit card:

Payment Date	Payee	Amount	Payment Method
1 December 2021	Binance	£5,000	Debit Card
1 December 2021	Binance	£5,000	Debit Card
3 December 2021	Binance	£5,000	Debit Card
6 December 2021	Binance	£5,000	Debit Card
6 December 2021	Binance	£5,000	Debit Card
10 December 2021	Binance	£5,000	Debit Card
14 December 2021	Binance	£5,000	Debit Card
15 December 2021	Binance	£5,000	Debit Card
16 December 2021	Binance	£5,000	Debit Card
17 December 2021	Binance	£5,000	Debit Card
17 December 2021	Binance	£5,000	Debit Card
17 December 2021	Binance	£5,000	Debit Card
20 December 2021	Binance	£5,000	Debit Card
20 December 2021	Binance	£5,000	Debit Card
20 December 2021	Binance	£5,000	Debit Card
20 December 2021	Binance	£5,000	Debit Card

29 December 2021	Binance	£5,000	Debit Card
29 December 2021	Binance	£5,000	Debit Card
29 December 2021	Binance	£5,000	Debit Card
5 January 2022	Binance	£5,000	Debit Card
5 January 2022	Binance	£5,000	Debit Card
5 January 2022	Binance	£5,000	Debit Card

Mr H realised he had been scammed when he was speaking to a colleague about the investment and how it had come about, and his colleague warned him about an article he had seen that was similar and turned out to be a scam.

Mr H has not been able to recover any of the payments he made into the scam.

Our Investigator considered Mr H's complaint but didn't think it should be upheld. Mr H didn't agree so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr H has fallen victim to a cruel scam. The evidence provided by both Mr H and HSBC sets out what happened clearly. What is in dispute is whether HSBC should refund the funds Mr H lost due to the scam.

Recovering the payments Mr H made

The only method HSBC has available to recover payments made via debit card is to request a chargeback. But HSBC was unable to process a chargeback for the payments Mr H made in relation to this scam to Binance.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr H was dealing with the scammer, which was the person that instigated the scam. But Mr H didn't make the debit card payments to the scammer directly, he paid a separate cryptocurrency exchange (Binance). This is important because HSBC was only able to process chargeback claims against the merchant he paid (Binance), not another party.

The service provided by Binance would have been to convert or facilitate conversion of Mr H's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr H paid. As Binance provided the requested service to Mr H any chargeback attempt would likely fail.

Should HSBC have reasonably prevented the payments Mr H made?

The payments Mr H made to Binance were for a significant amount, to a new payee. So, I would have expected HSBC's fraud prevention systems to have been triggered, and for HSBC to have asked Mr H questions about the payments he was making.

I can see that Mr H had several calls with HSBC throughout the duration of the scam and HSBC has provided a copy of the calls to us. It's clear from the calls Mr H was becoming more and more frustrated as payments he was attempting to make were being stopped.

In one call Mr H is attempting to make a transfer from his account at HSBC to another of his accounts held at another bank and he explained he was making this payment to then fund his Binance account. Mr H confirmed that no third party was involved in the payments and that he had not been instructed or persuaded to make the payment.

In another call Mr H was asked if he had checked with the FCA that the payments were legitimate. Mr H avoided the question and instead said he knew the investment was trustworthy and that he knew others making the same investment.

The above answers were incorrect as a third party was clearly involved in the payments Mr H was making and he had been persuaded to make the payments by X.

Mr H has told us that HSBC should have done more and the scam he was experiencing had attributes common to other scams HSBC would have been aware of at the time. It's always possible for a business to ask more questions about payments that are being made but it's clear to me from the above calls that Mr H was willing to give incorrect answers to HSBC about the payments he was making so they would be processed.

For this reason, I think it's unlikely Mr H would have given more honest answers had he been questioned further by HSBC when the payments were being made, so I don't think HSBC would have been able to uncover the scam.

As I don't think HSBC missed an opportunity to prevent the scam it is not responsible for Mr H's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 July 2023.

Terry Woodham
Ombudsman