

The complaint

Ms K complains that HSBC UK Bank Plc did not do enough to protect her from the financial harm caused by an investment scam company.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Ms K was a victim of an investment scam. She was contacted by a broker claiming to work for a company I'll refer to as "B" who she came across online. The broker asked her to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto her online wallet. Between 29 September and 26 November 2020, she made seven payments to two cryptocurrency exchange companies totalling £9496.46.

Ms K realised she'd been the victim of a scam when she discovered she had a negative balance. She contacted HSBC to ask for help to retrieve the money and it requested evidence to support the claim. HSBC subsequently said it was unable to refund any money because it had been paid to genuine cryptocurrency exchange companies who had transferred the cryptocurrency to Ms K's online wallet. And when Ms K complained to HSBC, it maintained its position stating she hadn't provided all the information it had asked for and without that, the chargeback request wouldn't be successful. It accepted there had been delays in dealing with the complaint and credited the account with £200.

Ms K wasn't satisfied and so she complained to this service. She said she didn't have investment experience and had checked the company reference and registration before going ahead with the payments.

Unfortunately, our investigator didn't think the complaint should be upheld. She was satisfied Ms K had carried out and authorised the payments. So, the starting position was that she was liable for them. Our investigator considered if there was more HSBC could've done to prevent the scam, but she didn't think the payments were suspicious or unusual. And there were no warnings about either of the two cryptocurrency exchange companies with either the Financial Conduct Authority ("FCA") or the International Organization of Securities Commission ("IOSCO"), so she didn't think HSBC had missed an opportunity to identify the payments were being made in relation to a scam.

Regarding HSBC's decision not to raise a request under Visa's chargeback scheme, she noted the payments went directly to the cryptocurrency exchange companies and not to B, and as they'd provided the intended service, this was a reasonable exercise of B's discretion.

Ms K has asked for her case to be reviewed by an ombudsman arguing that it should have raised a chargeback.

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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Ms K has been the victim of a cruel scam. I know she feels strongly about this complaint and this will come as a disappointment to her, so I'll explain why.

I'm satisfied Ms K 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Ms K is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Ms K didn't intend her money to go to scammers, she did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Triggers

Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to genuine cryptocurrency exchange companies. However, HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Ms K when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Ms K from financial harm due to fraud.

The payments didn't flag as suspicious on HSBC's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Ms K normally ran her account and I don't think they were. All the payments were to legitimate cryptocurrency exchange companies and none of them were for particularly large amounts, nor were they out of character for the usual spending on the account. So, I don't think HSBC missed an opportunity to intervene.

Chargeback

I've thought about whether HSBC could have done more to recover Ms K's payments when she reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether

the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Ms K).

Ms K's own testimony supports that she used cryptocurrency exchanges to facilitate the transfers to B. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Ms K's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that HSBC's decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Ms K lost such a significant amount of money. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 28 February 2023.

Carolyn Bonnell
Ombudsman