

The complaint

Mr P complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost as a result of the scam.

What happened

Mr P was searching online for an investment opportunity and came across GG. The website looked authentic and Mr P noted that it appeared to be endorsed by a well-known television programme.

Mr P entered his details onto the website and was contacted by GG. It persuaded him to invest in cryptocurrency through B (a legitimate crypto exchange).

Mr P was helped by GG using Anydesk to invest through B and pay this onto GG. His supposed 'profits' were then displayed to him on an online portal (now known to be fake).

GG then told Mr P that in order to access his profits he would need to pay more money, and when Mr P refused to do so, he was told by GG that his 'account' with it would be reviewed and he was presented with another opportunity to invest this time with a more experienced 'advisor' at GG.

Mr P did not do so, and when he then decided he wanted to withdraw all the funds he had deposited, realised that all the money had gone.

He reported the scam to the police and HSBC and made a complaint. HSBC didn't uphold his complaint, so he brought it to this Service.

Our Investigator looked into things and thought that Mr P's complaint should be upheld in part.

Mr P accepted this, but HSBC did not, 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 uphold this complaint in part for broadly the same reasons as our Investigator. I'll explain why.

Was Mr P the victim of a scam?

Having reviewed the evidence, I'm satisfied that Mr P was the victim of a scam here. He was contacted by a supposedly legitimate business 'GG' after making an enquiry on its website.

GG was also supposedly endorsed by a well-known television programme, but this was not the case. GG also persuaded Mr P to download software onto his PC.

At the time of the scam, there was no warning on the Financial Conduct Authority (FCA) website about GG – however this has since been added, and so I don't think there is any doubt that GG was a scammer.

Mr P made the following payments as part of the scam.

Date	Payment type	Payee	Amount
13 April 2021	Card Payment	B	£10,000
13 April 2021	Card Payment	B	£3,000
19 April 2021	Card Payment	B	£10,000
19 April 2021	Card Payment	B	£5,000
26 April 2021	Card Payment	B	£5,000
26 April 2021	Card Payment	B	£10,000
27 April 2021	Card Payment	B	£10,000
27 April 2021	Card Payment	B	£10,000
28 April 2021	Card Payment	B	£10,000
28 April 2021	Card Payment	B	£10,000
29 April 2021	Card Payment	B	£10,000
4 May 2021	Card Payment	B	£10,000
4 May 2021	Card Payment	B	£10,000
6 May 2021	Card Payment	B	£10,000
6 May 2021	Card Payment	B	£10,000
12 May 2021	Card Payment	B	£10,000
12 May 2021	Card Payment	B	£10,000
14 May 2021	Card Payment	B	£10,000
14 May 2021	Card Payment	B	£10,000
18 May 2021	Card Payment	B	£10,000
18 May 2021	Card Payment	B	£5,000
25 May 2021	Card Payment	B	£10,000

25 May 2021	Card Payment	B	£10,000
27 May 2021	Card Payment	B	£5,000
27 May 2021	Card Payment	B	£1,000
27 May 2021	Card Payment	B	£10,000
27 May 2021	Card Payment	B	£4,000
1 June 2021	Card Payment	B	£7,000
14 June 2021	Card Payment	B	£10,000
15 June 2021	Card Payment	B	£10,000
16 June 2021	Card Payment	B	£10,000
		Total payments	£265,000

Did Mr P authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Mr P isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe. Accordingly, I've considered whether Mr P authorised the payments in question here.

Having done so, I'm satisfied that Mr P did authorise the payments in question here. They were made by him using his debit card. I understand that Mr P had been tricked by the scammer into instructing HSBC to make the payments – but while Mr P never intended the payments to go to the scammers, this doesn't change the fact that he authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of Mr P's payments

After Mr P made his payments, I wouldn't expect HSBC to do anything further until it was notified of the scam. For payments made by debit card, there was only 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 merchant ('B').

However, even if a chargeback was attempted, this would likely not have been successful. This is because the seller of the crypto, B, was a legitimate crypto exchange and provided the services which were requested of it which was the crypto itself. Therefore, the subsequent loss of the crypto to the scammer is a separate matter – and so a successful chargeback would unlikely have been possible – 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 P made in the first place – therefore preventing the loss

before it happened.

Mr P 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 P was the victim of a scam. This means that while Mr P 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 P has made – and if HSBC should have intervened.

The first six payments

While these amounts would usually seem high for HSBC to have had no interaction with Mr P about what he was doing – I do need to balance this with how Mr P was running his account before they were made. I can see looking at Mr P’s account in the lead up to the scam taking place that he had been making several high value transactions in the weeks before the first payment that he made to B, so I think that there was a pattern of high spending on his account at this time. The first six payments were also made over a period of two weeks. And so, I don’t think that HSBC necessarily needed to contact him at this time.

The seventh payment

By the time the seventh payment was made, Mr P had now paid out over £50,000 to B within a few weeks – and I think that this is a marked difference in the way that Mr P was running his account, especially as the payments were going to a crypto exchange, given that by January 2019, HSBC should already have had a good understanding about how scams like the one Mr P fell victim to work.

With this in mind, HSBC should reasonably have contacted Mr P to establish whether the transaction posed any possibility of placing Mr P in financial harm before processing it. But it did not do so. Had HSBC done so, I would’ve expected it to have questioned Mr P about the payment he was making – including what he was making the payment for and surrounding

context and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

I haven't seen anything to suggest that Mr P was coached by the scammers – or told to lie about what the payment was for, or how he came across the supposed investment – so I think that had HSBC questioned him I think that it would quickly have uncovered that the payment was very likely to have been a scam, and given Mr P a meaningful warning that he was being scammed. And I don't think that Mr P would have ignored such a warning either.

HSBC says that as Mr P had already paid out such a large sum of money by the time that an intervention by it would have had no effect – as he was clearly under the spell of the scammer by this time. But as HSBC didn't give Mr P a warning, I don't see how it can say that he wouldn't have listened to it – while he had already paid out a significant sum of money, he intended (and did go on to) pay significantly more, and I think a meaningful warning from his bank would have likely prevented him from paying more money when he would have been told he was likely being scammed.

So, I think that HSBC could have prevented the loss from this payment onward.

Should Mr P bear some responsibility for the loss?

Although I think that HSBC should have prevented the loss from 27 April, I do also need to consider if Mr P should bear some responsibility for what happened here by way of contributory negligence.

Mr P is already bearing some responsibility here, as I am not asking HSBC to refund him for the first six transactions – but I do think that there should be some further reduction in award here too.

Mr P has explained that he did some research into the 'company' before he made the payments – but that there wasn't much information available. He also said that he searched the FCA register to check that B were registered – but he didn't do so for GG. I think that Mr P should have applied more caution here – if he had been told that the 'company' was registered, but that this wasn't true, I think he should have been aware that there was a risk attached to making such payments.

I also think that Mr P should have acted sooner than he did when stopping making payments as he was having difficulty in accessing his supposed returns but continued to make payments, although I do understand that he was being pressured into doing so.

I understand that HSBC thinks that Mr P should bear 50% of the loss as aside from the above, as the rate of return Mr P was promised by GG was 'too good to be true'. But I disagree. While Mr P had made investments through ISA's before and held his holding with HL, he wasn't experienced in crypto – and HSBC were the experts here, not him. HSBC missed an opportunity to intervene when it should have, and I consider that it should bear more responsibility than Mr P in this case.

Putting things right

HSBC UK Bank Plc should pay Mr P the sum of all payments from payment seven, minus 25% for contributory negligence.

I calculate this figure to be £166,500.

HSBC should also pay Mr P 8% simple interest, from the date the payments were made until payment is made to Mr P.

My final decision

I uphold this complaint in part. 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 P to accept or reject my decision before 11 July 2023.

Claire Pugh
Ombudsman