

The complaint

Miss P has complained that HSBC UK Bank Plc (HSBC) has refused to refund her the money she lost as a result of a scam. While HSBC initially credited the lost funds to Miss P's account, they later debited the funds following the results of their investigations.

HSBC has debited further funds from Miss P's account since this complaint has been with our service. This will not be considered within the decision.

What happened

Miss P had been investing in cryptocurrency for several years via the business Coinbase when she started talking to someone via an online dating app. This person suggested Miss P should use Binance, a different cryptocurrency exchange, instead.

Miss P did some research and decided to try Binance herself. Miss P made an initial deposit and started to trade with BNB fast trading. Miss P did a small test withdrawal from the investment which was successful before continuing to trade. However, when Miss P tried to make a larger withdrawal, she was told she would have to make a tax payment.

After researching online about tax payments Miss P felt the request was reasonable and made the requested payment. Miss P was then told her funds had been frozen due to money laundering and a further payment would need to be made.

At this point Miss P realised she had fallen victim to a scam.

Miss P made the following payments into the scam:

Date	Payee	Amount	Payment Method
17 June 2021	Binance	£1,000.00	Credit Card
17 June 2021	Binance	£1,077.04	Credit Card
18 June 2021	Binance	£4,000.00	Credit Card
24 June 2021	Binance	£4,000.00	Credit Card
2 July 2021	Binance	£5,099.85	Credit Card
3 July 2021	Binance	£2,552.04	Credit Card
3 July 2021	Coinbase	£1,586.55	Credit Card
4 August 2021	Binance	£1,000.00	Credit
4 August 2021	Binance	£4,000.00	Credit
4 August 2021	Binance	£4,000.00	Credit
4 August 2021	Binance	£1,586.55	Credit
4 August 2021	Binance	£2,552.04	Credit
11 October 2021	Binance	£4,000.00	Re-debit
11 October 2021	Binance	£4,000.00	Re-debit

Our Investigator considered Miss P's complaint and thought it should be upheld in part. HSBC accepted our Investigator's decision. Miss P disagreed, 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 Miss P has fallen victim to a cruel scam. The evidence provided by both Miss P and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Miss P lost due to the scam.

I would like to point out at this time that it's not unusual for a bank to refund payments while it carries out an investigation and to later re-debit the same amount if it finds it was either not able to recover the money or is not liable for it.

I will not be able to uphold this complaint based on HSBC's decision to refund and then re-debit Miss P's account alone.

Recovering the payments Miss P made

HSBC was unable to process a chargeback for the payments Miss P made in relation to this scam.

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.

As the scammer was not a party to the payments, Miss P does not have a valid claim against the company she paid. This is because the company provided the service, which was to purchase the crypto currency. The subsequent transfer to a wallet would not give rise to a valid chargeback.

So, I'm satisfied HSBC was unable to recover Miss P's money.

Section 75 Consumer Credit Act 1974

As Miss P made the payments into the scam via her credit card I have considered if HSBC is liable to her under s.75. As a starting point, it's useful to set out what the Act actually says:

75(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor...(3) Subsection (1) does not apply to a claim...

- a. under a non-commercial agreement,*
- b. so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000*

To summarise there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and

3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

In Miss P's case the transactions don't meet these requirements. The business Miss P paid from her HSBC credit card account was not the business that scammed her. She paid a legitimate cryptocurrency exchange and then forwarded these funds to the scammer. So, she did not lose her money until the funds were sent from her Binance/Coinbase accounts to the scammer. The debtor-creditor-supplier agreement has therefore been broken and Section 75 doesn't apply in these circumstances.

Should HSBC have prevented the payments Miss P made?

Miss P has accepted she authorised the payments she made to Binance/Coinbase albeit on the scammer's instruction, so the starting point here is that Miss P is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Miss P was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The payments Miss P made into the scam were to a new payee she had not previously paid, but it wouldn't be reasonable for me to suggest HSBC has to step in every time one of its customers makes payments to a legitimate business that they haven't previously paid.

The first four payments were also for relatively low amounts that I wouldn't have expected to trigger HSBC's fraud prevention systems, prompting it to step in.

The fifth payment Miss P made was for a larger amount that I would expect to have triggered HSBC's fraud prevention systems generally. But Miss P had previously used her credit card account to make regular payments to another cryptocurrency exchange so this payment would not have been out of character for how Miss P used her account generally, and for this reason I wouldn't have expected this payment to have been picked up by HSBC's fraud prevention systems either.

So, I don't think HSBC missed an opportunity to prevent this scam up to this point.

However, before Miss P was able to make the final two payments to Binance she had three payments declined for amounts close to and over £5,000. While HSBC sent Miss P an SMS to confirm the payments were being made by her, I think it should have stepped in and questioned her about what the payments were for at this stage.

Had HSBC questioned Miss P about the payments she made on 3 July 2021 I see no reason why she wouldn't have explained what the payments were for, and HSBC would likely have uncovered the scam preventing any further loss. So, HSBC is responsible for the payments Miss P made from 3 July 2021 onwards.

Miss P has further argued that all payments to Binance should have been stopped by HSBC as there was information available on the FCA website and HSBC has banned payments to Binance.

But the information on the FCA website did not indicate Binance to be a scam or prevent it from converting currencies. And HSBC didn't ban the use of Binance until after Miss P made these payments. So, this information doesn't change my decision.

Did Miss P contribute to her loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances I don't think it would be fair to say Miss P contributed to the loss. I say this because the scammer went to great lengths to present the investment as legitimate and gain Miss P's trust. There was also limited information about the scammer available at the time that would have helped Miss P realise she was falling victim to a scam.

Miss P also carried out her own online research before investing and paying future tax payments to the scam. So, I don't think Miss P could have foreseen the risk that she was being scammed.

Crediting and re-debiting of two £4,000 payments

HSBC initially refunded all the payments Miss P made on her credit card in relation to the scam but after finding it was not responsible for Miss P's loss it re-debited the two payments of £4,000.

As I have explained above, I don't think HSBC is responsible for any of the payments Miss P made until 3 July 2021 (after the two £4,000 payments were made) and so I don't think it was unreasonable that HSBC decided to re-debit these amounts.

Having decided on what HSBC is responsible for in relation to the payments Miss P made, I will now cover the other points Miss P has raised.

Increase in credit card limit

Miss P has told us HSBC increased her credit card limit without asking her and if it had not done so she would not have lost so much to the scam.

I can see Miss P's credit limit had been increased several times prior to the limit increase to £20,000. Information provided by HSBC shows Miss P had made the requests to increase her credit limit to both £10,000 and then to £20,000.

Following each request HSBC manually assessed Miss P's affordability for the credit and based on its affordability checks granted the increase to Miss P's credit card limit.

As HSBC followed its usual checks before granting the increased credit limits to Miss P I don't think it has done anything wrong.

Rejection of loan applications

Miss P applied for a loan of £11,000 on two occasions, the 15 and 19 November 2021. The application failed both times after HSBC assessed Miss P's affordability to repay the loans. At this time HSBC would also have been aware of the balance on Miss P's credit card. As this had increased, Miss P's ability to afford the loan had likely fallen. So, I don't think it was unreasonable that HSBC took the decision to reject these loan applications.

In any case Miss P applied for a lower value loan (£8,000) on 19 November 2021 which was conditionally approved, and she decided not to proceed. As HSBC appeared to be willing to

offer this loan to Miss P I don't think it can be held responsible for her not proceeding with the application.

Interest charged on credit card balance (two £4,000 payments)

Miss P has said it was unfair for HSBC to charge her interest on the £8,000 balance. But as I've said above, as HSBC is not responsible for Miss P's loss it is entitled to charge her interest on her credit card balance.

HSBC told us it had paid Miss P £50 compensation for the customer service issues she faced, which I think was fair in the circumstances. Miss P said that this payment had not been made to her and that HSBC had instead made a payment of £50 in relation to a different complaint.

Since this complaint has been with our service HSBC has paid Miss P £75 in relation to the service received. I think this is fair and I won't be asking HSBC to pay Miss P anything further in relation to service and the points covered in this decision.

I understand HSBC has re-debited further transactions from Miss P's credit card account since she brought her complaint to our service. If Miss P is not happy about HSBC re-debiting her account, she will need to raise a second complaint.

Putting things right

HSBC UK Bank Plc should refund payments Miss P made into the scam from 3 July 2021.

HSBC UK Bank Plc should add 8% simple interest per year to the amount it pays Miss P from the time Miss P made the payments to the time HSBC UK Bank Plc provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 21 August 2023.

Terry Woodham
Ombudsman