

The complaint

Mrs G and Mr K complain that HSBC UK Bank Plc (HSBC) is refusing to refund them the amount they lost as the result of a scam.

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 K was looking for work when he was referred for a job via Facebook for the tour company Traveloka (X). Mr K understood that he would need to give ratings for the tours X offered. Mr K spoke to X via WhatsApp and Telegram.

Mr K was told he would have to make payments to continue with the job via a cryptocurrency account he had to set up to send payments to X. Mr K was promised a return on the payments he made.

Mr K realised he had fallen victim to a scam when X refused to make payments to him and continued to ask him to make more payments.

Mr K made the following payments into the scam:

Date	Payee	Payment Method	Amount
13 February 2023	Binance	Transfer	£14.00
14 February 2023	Binance	Debit Card	£70.50
15 February 2023	Binance	Debit Card	£130.00
15 February 2023	Binance	Debit Card	£80.00
16 February 2023	Binance	Debit Card	£600.00
16 February 2023	Binance	Debit Card	£170.00
16 February 2023	Binance	Debit Card	£700.00
16 February 2023	Binance	Debit Card	£710.00

Our Investigator considered this complaint and thought it should be upheld in part. HSBC agreed, but Mrs G and Mr K didn't. 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 K has fallen victim to a cruel scam. The evidence provided by both Mr K and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mrs G and Mr K lost due to the scam.

Recovering the payments Mr K made

HSBC has already agreed to refund Mr K for the first payment made into the scam of £14.

Mr K made the remaining payments into the scam via his debit card. When payments are made by card the only recovery option HSBC has is to request a chargeback.

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

The service provided by Binance would have been to convert or facilitate conversion of Mr K'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 K paid.

Should HSBC have reasonably prevented the payments Mr K made?

It has been accepted that Mr K authorised the payments that were made from his account with HSBC, albeit on X's instruction. So, the starting point here is that Mr K 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 been aware of the scam and stepped into question Mr K about the payments he was making. And if it had questioned Mr K, would it have been able to prevent the scam taking place.

The first payments Mr K made into the scam were for relatively low values to a genuine business. So, I don't think it was unreasonable that HSBC's fraud prevention methods were not triggered by the payments and that it didn't step into question Mr K about them.

On 16 February 2023 Mr K made four separate payments to Binance. Whilst the payments were still for relatively low values, I think multiple payments the same day to a cryptocurrency exchange should have caused HSBC concerns by the time Mr K made the fourth payment. Multiple payments to cryptocurrency exchanges on the same day is a common trait of crypto scams that I think HSBC ought to have been aware of.

Had HSBC questioned Mr K at the time of the payment as I think it should, I think he would have given honest answers. I think HSBC would have found that Mr K was working for a company that contacted him through Facebook and he had to make payments in crypto as part of the job. From this information I think HSBC would have uncovered the scam and prevented Mr K from any further loss.

HSBC is therefore responsible for the loss resulting from the last payment Mr K made into the scam.

I understand Mrs G and Mr K think HSBC should be held responsible for more of the loss. But I don't think it would be reasonable to say HSBC should have stepped in any sooner than when Mr K made the last payment into the scam. So, it is not responsible for the payments made prior to this.

Did Mr K contribute to the 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 Mr K contributed to the loss. I say this because Mr K had no previous experience in this type of employment, and he did carry out some research on X where he found a legitimate business by the same name. So, I don't think he would reasonably have been aware of the risk in making the payments.

So, I don't think it would be fair to reduce the compensation HSBC pays Mrs G and Mr K.

Putting things right

To put things right HSBC UK Bank Plc should refund the first payment made into the scam of £14 as agreed if it hasn't already. HSBC should also refund the last payment made into the scam of £710.00.

HSBC UK Bank Plc should also pay 8% simple interest per annum from the date of the loss until the date of the settlement (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 Mrs G and Mr K to accept or reject my decision before 19 March 2024.

Terry Woodham
Ombudsman