

The complaint

Mrs A complains that HSBC UK Bank Plc (HSBC) is refusing to refund her the amount she lost as the result of a scam.

Mrs A is being represented by a third party. To keep things simple, I will refer to Mrs A 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, Mrs A was contacted via the social media platform Instagram by someone (X) claiming to have made a large return by investing in cryptocurrency. X told Mrs A that she had invested a relatively small sum of £500 and seen a return of over £10,000.

Mrs A messaged X and was introduced by her to a coach (Y). Y messaged Mrs A and convinced her to invest an initial £500 on the basis that Mrs A would also see a substantial profit.

Mrs A could see she had made a substantial profit but was told by Y that she would have to make further payments before the profit could be released. Mrs A questioned the further payments with X and Y and was put at ease by them before making them.

After making the payments Mrs A didn't receive the withdrawal she had requested, and it became clear she had fallen victim to a scam.

Mrs A made the following payments from her HSBC account in relation to the scam:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
20 July 2022	Guardarian OU	Debit Card	£500.00
21 July 2022	Guardarian OU	Debit Card	£500.00
21 July 2022	Guardarian OU	Debit Card	£1,000.00
21 July 2022	Guardarian OU	Debit Card	£1,000.00

Our Investigator considered Mrs A's complaint and didn't think it should be upheld. Mrs A 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 Mrs A has fallen victim to a cruel scam. The evidence provided by both Mrs A and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mrs A lost due to the scam.

Recovering the payments Mrs A made

Mrs A made payments into the scam via her 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.

Mrs A was dealing with X and Y, which were the individuals that instigated the scam. But Mrs A didn't make the debit card payments to X and Y directly, she paid a separate cryptocurrency exchange (Guardarian). This is important because HSBC would only have been able to process chargeback claims against the merchant she paid (Guardarian), not another party (such as X and Y).

The service provided by Guardarian would have been to convert or facilitate conversion of Mrs A's payments into cryptocurrency. Therefore, Guardarian 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 merchants Mrs A paid.

Should HSBC have reasonably prevented the payments Mrs A made?

It has been accepted that Mrs A authorised the payments that were made from her account with HSBC, albeit on Y's instruction. So, the starting point here is that Mrs A 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 Mrs A about the payments she was making. And if it had questioned Mrs A, would it have been able to prevent the scam taking place.

The payments Mrs A made in relation to the scam were made to a legitimate business and for relatively low values. Although Mrs A had not previously made payments to this business before it would not be reasonable for me to say HSBC should intervene every time one of its customers makes relatively low value payments to a new payee.

With the above in mind, I don't think it was unreasonable that HSBC's fraud prevention systems were not triggered prompting it to step in and question Mrs A about what the payments were for.

I can see that HSBC did send an automated message to Mrs A when she made an initial payment of £500 to check it was Mrs A making the payment. It's not unusual for banks to check it is their customer making payments when payments are made to someone new. So, I am not surprised Mrs A received this message and I think this was a proportionate response from HSBC based on the activity taking place.

As Mrs A was the person making the payment, she confirmed it was her and the payment was processed as expected.

As I don't think it was unreasonable that HSBC didn't intervene further when the payments were made by Mrs A, I don't think it missed an opportunity to prevent the scam and it is not responsible for Mrs A's loss.

Mrs A has explained that English is not her first language, and although I don't dispute this, it is clear from the evidence Mrs A has provided, that she was able to understand the scammers' messages and instructions, so I don't think the language barrier was enough that she did not understand what was happening. So, this does not change my decision.

My final decision

I don't uphold this complete.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 April 2024.

Terry Woodham
Ombudsman