

## **The complaint**

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

Ms A is being represented by a third party. To keep things simple, I will refer to Ms 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, Ms A was contacted via Instagram by an individual (X). X started to build a friendship with Ms A before explaining that he gave advice on online trading in cryptocurrency. X told Ms A she could make a substantial profit if she accepted his guidance.

By the time X offered his guidance he had already built trust with Ms A, so she was keen to invest and agreed.

Ms A followed a link to a trading application provided by X and followed his instructions on how to setup and trade from the account sending funds via legitimate cryptocurrency exchanges.

After making several payments Ms A was told by the trading platform that she would have to make a further payment otherwise she risked being reported to the tax department. After making this payment Ms A decided to make a withdrawal from the investment but was persuaded to delay the withdrawal to gain further interest.

Ms A attempted to make a withdrawal from the investment again a few months later but was told a further substantial payment would have to be made as her account had been inactive. Ms A risked losing her account if a payment was not made.

After making a lower payment that Ms A agreed with the trading platform, she was still unable to make a withdrawal and after speaking with a family member it became clear that Ms A had fallen victim to a scam.

Ms 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>
3 October 2022	Binance	Debit Card	£1,000
17 October 2022	Binance	Debit Card	£4,000
28 October 2022	Binance	Debit Card	£4,600
31 October 2022	Binance	Debit Card	£4,400
21 November 2022	Binance	Debit Card	£5,000
21 November 2022	Binance	Debit Card	£5,000
24 November 2022	Binance	Debit Card	£5,000
25 November 2022	Binance	Debit Card	£5,000
28 November 2022	Binance	Debit Card	£5,000
28 November 2022	Binance	Debit Card	£1,300

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

#### *Recovering the payments Ms A made*

Ms 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.

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

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

#### *Should HSBC have reasonably prevented the payments Ms A made?*

It has been accepted that Ms A authorised the payments that were made from her account

with HSBC. So, the starting point here is that Ms 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 Ms A about the payments she was making. And if it had questioned Ms A, would it have been able to prevent the scam taking place.

The first payment Ms A made in relation to the scam was for a relatively low value that I wouldn't have expected to have triggered HSBC's fraud prevention systems. So, I am not surprised that HSBC didn't step into question Ms A about this payment.

The second payment Ms A made in relation to the scam was for a much higher value of £4,000. It was rare for Ms A to make such large payments using her debit card, and the payment was being made to a known cryptocurrency exchange. So, I think this payment should have triggered HSBC's fraud prevention systems, prompting it to step in and question Ms A about the payment.

I have not seen anything to suggest Ms A would have been dishonest if questioned by HSBC about the payments she was making, and the scam Ms A was experiencing carried common features of scams I would expect HSBC to have been aware of at the time. So, I think, had HSBC intervened as I think it should have at the time, it would have uncovered the scam and prevented any further loss.

HSBC is therefore responsible for Mr A's loss from the second payment she made into the scam of £4,000 on 17 October 2022 onwards.

*Did Ms A 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 do think it would be fair to reduce compensation by 50% on the basis that Ms A should share blame for what happened. Ms A had taken advice from a person she had met on social media who had given her advice for no apparent reason, that had helped her achieve a substantial profit. Ms A was then asked to make substantial payments to avoid being reported to the "tax department" and she made these payments without seeking any advice or carrying out further checks on the legitimacy of the payment requests. I think there were significant red flags around the payments that had been requested and Ms A should have taken more care.

### **Putting things right**

To put things right I require HSBC UK Bank Plc to refund the payments Ms A made in relation to the scam from the second payment she made on 17 October 2022 for £4,000 onwards, less 50%.

HSBC UK Bank Plc should add 8% simple interest per annum to the amount it pays Ms A (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 Ms A to accept or reject my decision before 25 April 2024.

Terry Woodham  
**Ombudsman**