

The complaint

Mr G is unhappy that the HSBC UK Bank Plc ("HSBC") will not refund the money he lost as the result of a scam.

Mr G has used a representative to bring his complaint to this service. For ease, I will refer solely to Mr G throughout this decision.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. Mr G was messaged via WhatsApp by a scammer I will call B. After a short period of time B started mentioning that she made money trading crypto on a platform. Mr G was persuaded to make the following payments to a crypto exchange via a combination of debit card payments and faster payments. The funds were then sent on to scammers.

Transaction Number	Date	Amount	Method of Payment	Merchant / Payee
1	11-Apr-22	£4,851.70	Visa Debit card	Crypto.com
2	11-Apr-22	£5,254.80	Visa Debit card	Crypto.com
3	25-Apr-22	£12,727.07	Visa Debit card	Crypto.com
4	27-Apr-22	£15,477.29	Visa Debit card	Crypto.com
5	28-Apr-22	£3,200	Faster Payment	Foris DaxMT Limited
6	29-Apr-22	£7,841.82	Visa Debit card	CRO Saint Julians
7	02-May-22	£7,100	Faster Payment	Foris DaxMT Limited
8	03-May-22	£1,006.03	Visa Debit card	Crypto.com
9	03-May-22	£10,320.26	Visa Debit card	CRO Saint Julians
10	03-May-22	£7,700	Faster Payment	Foris DaxMT Limited
11	04-May-22	£2,500	Faster Payment	Foris DaxMT Limited

12	04-May-22	£500	Faster Payment	Foris DaxMT Limited
13	05-May-22	£1,500	Faster Payment	Foris DaxMT Limited
14	06-May-22	£2,550	Faster Payment	Foris DaxMT Limited
15	06-May-22	£200	Faster Payment	Foris DaxMT Limited
16	07-May-22	£1,200	Faster Payment	Foris DaxMT Limited

Mr G asked to withdraw part of his investment returns. He was told that he would need to pay a fee for taxes, after some back and forth Mr G realised that he had been scammed.

Our investigator upheld this complaint because she said that payment two should have been considered out of character for Mr G's account and HSBC should have intervened at this point. She also eventually felt that had an intervention occurred at that point then the scam would have been stopped and therefore HSBC should refund Mr G the money he lost from transaction 2. She also felt that Mr G was partially responsible for his own loss, so she recommended a 50% reduction in the refund he was due.

HSBC did not agree and therefore the complaint has been passed to me to issue a decision. HSBC says it does not think it needed to intervene and doubted that an intervention would have uncovered that Mr G was being scammed.

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.

There's no dispute that Mr G made and authorised the payments. Mr G knew who he was paying, and the reason why. At the stage he was making these payments, he believed he was transferring funds to invest in cryptocurrency. I don't dispute Mr G was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mr G's instructions. So, in the first instance Mr G is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the faster payments were to an account in Mr G's name the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that HSBC should have

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.

- had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

I think HSBC should be liable for payments 2 to 16. I'll explain why.

Payments 1

There is a balance to be struck. Banks and building societies 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. In this instance whilst payment 1 was a large payment to a crypto exchange Mr G had made payments to exchanges before albeit smaller sums. He had also made large transactions in the past. So overall I don't think that HSBC needed to intervene during this transaction.

Payment 2

I think HSBC ought to have carried out further checks and spoken to Mr G before processing this transaction. It was higher than the first payment, and represented, combined with payment 1, over 10,000 to a crypto exchange in one day.

I note that HSBC have highlighted that Mr G had sent money to crypto exchanges in the past and had even made multiple payments in one day to crypto exchanges. That said the payment were small in comparison with payments one and two.

HSBC is aware of the typical patterns of scams like this – that customers often move money onto a crypto account in their own name before moving it on again to scammers; and that scams like this commonly take place with multiple payments. I think the large increase in the amount that Mr G was sending coupled with the two payments being on the same day should have prompted HSBC to question what the payment was for.

I also appreciate that Mr G's loss didn't materialise directly from his HSBC account in these circumstances. But even though he was transferring funds to a crypto account in his own name, I still think that HSBC ought to have taken a closer look at payment 2 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mr G started making his investments in April 2022, it is reasonable to say HSBC ought to have had a good enough understanding of how crypto scams works – including the fact that their customer often moves money to an account in their own name before moving it on again to the fraudster.

Therefore, I'm satisfied that HSBC should've had mechanisms in place to detect and prevent this type of fraud at the time Mr G was making this payment, and that it should have led to it intervening to ask further questions about payment 2.

I note that Mr G had made larger transactions to a different bank in the months prior to the scam and HSBC have argued that this means that transaction 2 was not unusual. But I am mindful that the transactions highlighted differed to one to a crypto exchange as it was sent to a bank so I don't think that this means that making a series of large transactions to a crypto exchange would seem like normal activity. So taken together they are sufficiently different than the payment highlighted by HSBC that by the time of the second transaction I think that it should have been clear that this was unusual for Mr G and had the hallmarks of a scam.

I would expect HSBC to have intervened and asked Mr G who the payment was for, what it was for, and for the context surrounding the payment - it could, for example have, asked how he had been contacted, whether he'd parted with personal details in order to open a trading account, whether he was being helped by any third parties e.g. a broker, and how he had come across the investment in this case via an unsolicited WhatsApp message .

I have no reason to believe Mr G wouldn't have been open with HSBC, and I think he would have taken its intervention seriously. So, I think HSBC would have quickly learned from its conversation with Mr G the basic background to the payment instruction – that he was buying cryptocurrency which was sent onto what he thought was a cryptocurrency type trading investment which he'd decided to pursue after learning about it via a person he had not met and who had contacted him in an unsolicited manner.

Even though the conversation would have identified the payment was going to Mr G's own cryptocurrency account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mr G's control. This is because by 2022 HSBC was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers.

So, I think HSBC would have been concerned by what the conversation would most likely have revealed and so warned Mr G, explaining the typical characteristics of scams like this. Had it done so I think Mr G would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if HSBC had intervened effectively given that a warning would be coming from his trusted bank.

It follows I think Mr G would not have gone ahead with payment 2, nor any subsequent payments.

I've considered carefully whether Mr G should hold some responsibility for his loss by way of contributory negligence. Firstly, I am aware that Mr G took out a number of loans in order to fund his "investment". HSBC have provided copies of Mr G's loan application that he applied for in April 2022 and it states that the loan purpose was for home improvements. Mr G has said that he did not say this and that when he took out other loans with different financial institutions he was not asked about the loan purpose.

I don't find this explanation plausible as it is my experience that financial institutions generally do ask for the purpose of a loan as it helps determine the risk of the loan and the appropriate term so I am satisfied albeit on balance that he would have had to declare the purpose of these loans. I am also satisfied that he would not have mentioned that he was intending to use the funds for crypto trading as they likely would not have been approved for that purpose. So overall on balance I think it likely that Mr G misled the firms that he took out loans with and had he not done so the loans would not have been approved so I think he contributed to his own loss.

I also note that Mr G had found out about B from someone who he had never met in person and had only known for a few weeks and on her advice parted with over £80,000 in under 4 weeks, without receiving any substantial returns.

So overall and having considered everything I think that Mr G contributed to his own loss and therefore I currently feel that it would be appropriate to reduce the amount of compensation due to Mr G by 50%.

I have also considered whether HSBC could have recovered the funds for Mr G via other means. As already explained the CRM does not apply to payments made to accounts held in a consumers own name so the faster payments could not be recovered. In relation to the debit card payments a chargeback would not have been successful as the payments were made to purchase crypto and that is what was provided so he essentially got what he paid for. I don't think that there were any other means for the funds to have been recovered.

Finally, HSBC have raised concerns that some of the money that Mr G sent to B came from a number of different people transferring funds to his account. Mr G has explained that these were loans from friends which he has since paid back. I think that this is a reasonable explanation so I don't think it affects the outcome of this complaint.

Putting things right

HSBC will have to

- Refund 50% of transactions 2 to 16, minus anything already refunded or paid back by B, my understanding is that this amounts to £10
- Pay 8% simple interest, per year, on these transactions from the date of each transaction to the date of settlement less any appropriate tax

My final decision

I uphold this complaint in part and require HSBC UK Bank Plc ("HSBC") to pay the redress outlined above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 January 2024.

Charlie Newton
Ombudsman