

The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) won’t refund money he lost when he fell victim to a cryptocurrency investment scam.

What happened

The detailed background to the complaint is well-known to both parties. The facts about what happened aren’t in dispute. So, I’ll provide an overview and focus on giving my reasons for my decision.

Between September 2021 and August 2022, Mr M made several debit card payments totalling over £40,000 from his HSBC account to different cryptocurrency exchange providers. HSBC and our service have been told that these were made in connection with three simultaneous investment opportunities Mr M had participated in, but subsequently discovered he’d been scammed. He reported this to HSBC in May 2023.

HSBC didn’t refund the debit card transactions. It did, however, refund two faster payments which Mr M made in November 2021 in connection with a loan he’d attempted to obtain to fund the investment opportunities. Mr M had been tricked into making upfront payments to a third party to secure the loan.

Unhappy with HSBC’s refusal to refund the debit card payments, Mr M made a complaint to the bank through a professional representative. The complaint was then referred to our service. One of our investigator’s looked into Mr M’s concerns and concluded that HSBC hadn’t missed an opportunity to prevent the scam as they didn’t think it needed to intervene when the disputed payments were authorised.

Mr M disagrees with the investigator’s outcome. In summary, he says he’s been a loyal customer of HSBC for several years and was vulnerable at the time of the payments due to a relationship breakdown and bereavement. Mr M says this affected his judgement and HSBC should have intervened. Mr M is no longer being represented in his complaint.

As an agreement couldn’t be reached, the complaint has been passed to me to decide. The transactions were set out in the investigator’s assessment, so I haven’t listed them again here. The individual disputed amounts range between £3 and £2,654. Majority of the transactions were below £1,000.

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.

I’d like to start by thanking both Mr M and HSBC for their patience while this complaint has been awaiting an ombudsman’s review. I want to reassure the parties that although I’ve only summarised the background and arguments above, so not everything that happened is detailed, I’ve read and considered everything that our office has been provided in its entirety.

Having done so, I agree with the conclusions reached by the investigator. I'll explain why.

Under the Payment Services Regulations 2017 (PSR) and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Mr M made the payments using his security credentials, and so they are considered authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

Mr M submits that the disputed transactions show a pattern of unusual activity on his account and so they ought to have alerted HSBC. But I don't agree. The first few transactions were below £100 each and they were spread across two months. I accept that the transactions were identifiably cryptocurrency related. But purchasing cryptocurrency is a legitimate exercise. And looking at Mr M's account statement, I can see that this wasn't the first time payments were made to a cryptocurrency exchange. I can see two payments in May 2021. As no concerns had been raised during that time, I don't consider HSBC ought to have paused the disputed payments in question simply on the basis of being cryptocurrency related.

The disputed transactions over the course of the next few weeks ranged from £3 to £416. As the earlier cryptocurrency payments had become part of Mr M's account spending pattern, I wouldn't have expected these subsequent transactions to have triggered the bank's systems. I understand the point Mr M makes about the increased cumulative spending on the scam payments. But I don't find that the HSBC ought to have been concerned about the merchants Mr M had been making the payments to. And the overall monthly account activity didn't seem that unusual.

By the time Mr M authorised the largest single-value transaction in dispute (£2,654.02), his account statements show he'd sent over ten payments to a cryptocurrency exchange in the previous three months (in addition to the two transactions six months earlier). The individual disputed amount is larger than any other transaction in the previous year. But it isn't *that* unusual such that I think HSBC ought to have made enquiries before releasing the payment.

Even if I were to make the finding that the transaction ought to have triggered – to be clear, that isn't the finding I'm making – it doesn't automatically follow that a proportionate intervention would have been for the bank to have spoken to Mr M and asked questions about the nature of his payment. In the circumstances, it might well have been appropriate for HSBC to have provided a scam warning during the payment flow.

From the information I've seen, HSBC provided a warning when Mr M made the faster payments in connection with the loan application (which the bank has since refunded). According to his former representative, the scammer told Mr M to ignore the warning and that is what he did. On balance, I think Mr M would likely have taken the same step had HSBC provided a warning when he authorised the £2,654.02 transaction. So, had I concluded that the payment ought to have flagged as suspicious, I wouldn't have been persuaded, on balance, that causation would be met.

Except for two transactions which were around a similar value, the remaining disputed transaction were for smaller amounts. And they were spread across the next eight months.

Having carefully thought about this, I find that it wasn't unreasonable of HSBC to have executed Mr M's authorised instructions.

I've considered what Mr M has said about his personal circumstances at the time he made the payments, which he says made him vulnerable. There is a provision in the voluntary Contingent Reimbursement Model (CRM) Code for victims of authorised push payment scams to receive a full refund if they're found to be vulnerable as defined under the code, regardless of whether the business knew about their vulnerability before the scam took place. Although HSBC is a signatory to the Code, as I've mentioned it only applies to authorised push payments such as faster payments. Debit card transactions are 'pull payments' as they're collected by the merchant being paid. These aren't covered by the Code.

I understand that the bank was made aware of Mr M's circumstances at the time the scam was reported. But having reviewed the evidence available to me, I can't see that HSBC ought to have been aware of those circumstances *before* or *when* Mr M authorised the payments he's disputing. Ultimately, my finding here is that I don't consider any of the disputed payments ought to have triggered as suspicious to the bank. As such, I wouldn't have expected HSBC to have discussed them with Mr M before releasing them. As no intervention was warranted, and so no discussion took place, I can't fairly say HSBC should have been aware and taken account of Mr M's personal circumstances when executing the payments.

I know that Mr M will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I recognise that a significant sum of money has been lost to third parties. Despite my natural sympathy for the situation in which Mr M finds himself, for the reasons given, it wouldn't be fair of me to hold HSBC responsible for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2024.

Gagandeep Singh
Ombudsman