

The complaint

Mr T complains that HSBC UK Bank Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2021 Mr T saw a programme about cryptocurrency which was endorsed by a well-known celebrity. Around the same time, he received a cold call from someone claiming to work for a company I'll refer to as "A", who said he could make money from investing in cryptocurrency. The broker said the investment would be low-risk and Mr T checked A's website and didn't find anything negative.

The broker told Mr T to first purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "L" and then load it onto an online wallet. Between 7 January 2021 and 13 April 2021, he made six payments totalling £13,473.71 from his HSBC account. During this period, he received credits of £3,718.87 and £501.36, but he became concerned around April/May 2021 when a withdrawal request wasn't processed, so he contacted the Financial Conduct Authority ("FCA") who told him he'd been scammed.

In August 2021, Mr T was contacted by someone claiming to be a recovery agent appointed by the Cyber Crime Commission and the International Organisation of Securities Commissions ("IOCSO") to distribute funds from A. They charged him £750 to register and gave an address in Switzerland and several telephone numbers used by individuals connected to the process. Between 4 August 2021 and 4 November 2021, he made 28 payments to L totalling £114,691. During this period, he received credits into the account totalling £50,279.63.

Mr T contacted HSBC when he discovered he'd been scammed, but it said the funds were sent to an account in his own name, so the Contingent Reimbursement Model ("CRM") code didn't apply.

He complained to this service with the assistance of his representative who explained he is elderly and vulnerable, he isn't experienced in online investments and is not IT literate, so he wouldn't have been able to conduct effective due diligence. They said the scammer must have found Mr T's details following research he did in March 2021, and that he fell for the recovery scams because he was desperate to recover money, he lost to the first scam. They said that HSBC failed to identify the transactions as unusual and to prevent his loss.

HSBC said there was no loss from Mr T's HSBC account. It said there were previous large payments from the account, so the disputed payments weren't out of character, and it had contacted Mr T, but it didn't make a difference. It said he'd failed to undertake due diligence as the Financial Conduct Authority ("FCA") had posted warnings about A around the time of

the payments. And he'd paid a merchant which had provided genuine cryptocurrency services so there was no prospect of a successful chargeback.

Our investigator didn't think the complaint should be upheld. She said for the CRM code to apply, the payment had to be made to an account held in another name, and the code doesn't cover card payments and international transfers.

She didn't think the payments were unusual because the account had a history of large payments, and it wasn't unusual for Mr T to make multiple payments on the same day or to deposit funds into the account, which he then used on the same day.

She noted there was a call on 21 August 2021, but the payments weren't approved because Mr T was unable to confirm the beneficiary account details. In a further call on 22 August 2021, Mr T confirmed he was transferring funds to his cryptocurrency account and that he wanted the transactions to go ahead. He said this was his first time trading, he hadn't been referred by anyone, and he'd done his own research. The call handler explained they wanted to make sure he was sending funds to a legitimate account and warned him about scams.

Our investigator noted Mr T denied the involvement of a third party, so HSBC was unable to provide a tailored warning. But she didn't think a more tailored warning would have made any difference as he was keen to recover the money he'd lost, and he'd received multiple credits into his account.

She explained there was a further call on 3 November 2021 when Mr T tried to make a payment £15,300. During the call, he was told that criminals ask customers not to discuss payments with their bank and he denied that he'd been asked by any third parties to make the payment. Again, she didn't think the warning was relevant to the circumstances, but she didn't think a more relevant warning would have made a difference. And as Mr T didn't disclose the involvement of a third party, HSBC didn't have the full facts to enable it to identify that Mr T was being scammed.

Our investigator concluded that Mr T was trying to recover money he'd lost to the first scam and had been enticed by the credits he had received, and as he didn't disclose the existence of the third-parties in any of the calls, she didn't think there was anything else HSBC could have done to uncover or prevent the scam.

Mr T has asked for his complaint to be reviewed by an Ombudsman. He accepts the claim wasn't covered under the CRM code, but he believes the account activity was unusual. His representative has explained he received some money following his retirement in October 2019. He told HSBC he was due to receive three lump sum payments and it advised him to transfer the funds out to accounts he held with other banks. They have said HSBC allowed the transfers out of the account to 'condition' the account for all future transactions, which was unfair.

The representative accepts Mr T had made several larger purchases including a car and various holidays, but HSBC should have reverted to the typical nature of the account because between 6 May 2019 and 6 March 2020, over 90% of the transactions were under £400, so the scam payments unusual.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr T has been the victim of a cruel scam. I know he

feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr T says he's fallen victim to, in all but a limited number of circumstances. HSBC has said the CRM code didn't apply in this case because Mr T paid an account in his own name, and I'm satisfied that's fair.

I've thought about whether HSBC could have done more to recover Mr T's payments when he reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr T).

Mr T's own testimony supports that he used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Mr T's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that HSBC's decision not to raise a chargeback request was fair.

I'm satisfied Mr T 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr T is presumed liable for the loss in the first instance.

It's not in dispute that this was a scam, but although Mr T didn't intend his money to go to scammers, he did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether HSBC could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr T when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Mr T from financial harm due to fraud.

The payments didn't flag as suspicious on HSBC's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr T normally ran his account and I agree with our investigator that, based on the account activity in the months before, the payments weren't unusual. This is because there was a history of large payments from the account, so the payments weren't concerning.

Between 9 March 2021 and 4 November 2021, Mr T made several large payments to the scams which ranged from £6,000 to £15,300. I accept these were large payments, but there were several payments on the account which exceeded these sums, so I'm satisfied that the

scam payments wouldn't have seemed unusual. I also accept that some of the disputed payments put the account into an agreed overdraft, but it wasn't uncommon for Mr T to use his overdraft facility. And while he was paying a merchant that was associated with cryptocurrency, the payments were spread over several months, so by the time he made the later payments, L was an established payee.

Mr T's representative has argued that some of the larger payments out of the account should have been ignored for the purposes of identifying whether the scam payments were unusual because HSBC knew he'd received money following his retirement and was transferring it out to accounts he held with other banks. While I accept some of the account activity might have been unusual because he was moving money he'd received following his retirement, I wouldn't reasonably expect HSBC's fraud systems to distinguish this activity. And many of the payments were to accounts in Mr T's own name, so there was little to distinguish them from the scam payments, which were also to an account in his own name.

Even though I don't think HSBC missed an opportunity to intervene, it did contact Mr T on 21 August 2021 and 22 August 2021, so I've thought about what happened when it did intervene. During the two calls, Mr T wasn't given a warning that was relevant to a recovery scam, but he was asked probing questions including whether there was a third party involved. Unfortunately, he didn't disclose the fact he was paying what he thought was a recovery agent, so HSBC couldn't reasonably have discovered the scam.

HSBC intervened again on 3 November 2021. During that call, Mr T was asked some questions about the purpose of the payment, but the warning he was given wasn't relevant to the circumstances. He was asked again whether there was a third party involved and he said there wasn't so, HSBC didn't uncover the scam.

I've thought about whether HSBC could reasonably have done anything else during the calls which might have prevented Mr T from going ahead with the payments, and I don't think it could. This is because, Mr T didn't tell it he was paying recovery agents, he didn't mention the fact he'd already been scammed, and he didn't tell it he believed he was paying recovery agents, so I don't think it would have made any difference if he'd been probed further. I agree with our investigator Mr T was determined to go ahead with the payments because he thought he was dealing with genuine recovery agents who were going to help him to recoup the money he lost to the first scam. And he'd received significant credits into the account which added to his confidence that the process was genuine. So, I don't think there was anything else HSBC could have done to prevent his loss.

Compensation

HSBC said it was unable to locate a folder Mr T had submitted in support of his complaint, but it was unlikely it would have made a difference given the funds were paid to an account held in his own name. It offered £500 compensation for its failings and confirmed the matter had been reported to its Data Protection Office. I'm satisfied that was fair and reasonable in the circumstances and I don't think Mr T is entitled to any more compensation.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Mr T has lost money and the effect this has had on him. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, 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 T to accept or reject my decision before 25 December 2023.

Carolyn Bonnell
Ombudsman