

## 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, in January 2023 Mrs A found an advertisement online for an investment trading opportunity with the businesses Thermex Crypto and TSL Crypto Options (X). Interested in the opportunities, Mrs A exchanged messages with X and agreed to start investing.

Mrs A later realised she had fallen victim to a scam when she was unable to make a withdrawal from the investment.

Mrs A made the following payments in relation to the scam:

Date	Payee	Payment Method	Amount
10 January 2023	Coinbase	Debit Card	£1,000.00
23 January 2023	Coinbase	Debit Card	£1,000.00
1 March 2023	Coinbase	Debit Card	£3,000.00
2 March 2023	CRO	Debit Card	£1,750.00
22 March 2023	CRO	Debit Card	£102.99
29 March 2023	Crypto.com	Debit Card	£1,750.83
29 March 2023	CRO	Debit Card	£1,441.86
3 April 2023	Crypto.com	Debit Card	£3,012.46
11 April 2023	Crypto.com	Debit Card	£1,009.30
11 April 2023	Moonpay	Debit Card	£2,300.00
11 April 2023	Crypto.com	Debit Card	£514.95
11 April 2023	Crypto.com	Debit Card	£1,544.85
11 April 2023	Crypto.com	Debit Card	£2,090.70
11 April 2023	CRO	Debit Card	£2,059.80
11 April 2023	CRO	Debit Card	£1,956.81
13 April 2023	Crypto.com	Debit Card	£2,883.72
13 April 2023	Crypto.com	Debit Card	£2,894.02
13 April 2023	Crypto.com	Debit Card	£2,986.71
18 April 2023	Moonpay	Debit Card	£2,900.00
19 April 2023	CRO	Debit Card	£514.95
19 April 2023	CRO	Debit Card	£1,544.85
20 April 2023	CRO	Debit Card	£1,544.85
20 April 2023	CRO	Debit Card	£720.93
20 April 2023	Crypto.com	Debit Card	£1,544.85

Our Investigator considered Mrs A's complaint and thought it should be upheld in part. HSBC 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, which was the businesses that instigated the scam. But Mrs A didn't make the debit card payments to X directly, she paid separate cryptocurrency exchanges. This is important because HSBC would only have been able to process chargeback claims against the merchants she paid, not another party (such as X).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mrs A's payments into cryptocurrency. Therefore, they 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 X'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 intervened when Mrs A made the payments. And if it had intervened, would it have been able to prevent the scam taking place.

The first two payments Mrs A made in relation to the scam were for relatively low values, so I don't think it was unreasonable that these payments didn't trigger HSBC's fraud prevention systems prompting it to intervene.

The third payment Mrs A made in relation to the scam was three times the value of the other two payments to a well know cryptocurrency exchange. The payment was also made at a time that HSBC would have been aware of the heightened risk associated with such payments. I think this payment should have caused HSBC concerns and it should have intervened.

Had HSBC intervened when Mrs A made the third payment in relation to the scam, as I think it should have, I would have expected it to have at least provided Mrs A with a written warning tailored to investment scams. I think it's likely that had HSBC provided such a warning Mrs A would not have made the payments. Therefore, HSBC is responsible for Mrs A's loss.

#### *Did Mrs 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 on the basis that Mrs A should share blame for what happened. Mrs A was promised returns on her investment that were simply too good to be true. I think this should have been a red flag to Mrs A and should have caused her concern, yet it appears Mrs A made payments in relation to the scam without carrying out a reasonable amount of research first.

#### **Putting things right**

To put things right I require HSBC UK Bank Plc to refund the payments Mrs A made in relation to the scam from the third payment of £3,000 made on 1 March 2023 onwards less 50%.

HSBC UK Bank Plc should add 8% simple interest to the amount it pays Mrs A from the date the payments were made to the date it provides the refund (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 outlined above

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

Terry Woodham  
**Ombudsman**