

The complaint

X complains that HSBC UK Bank Plc did not refund a series of payments he lost as part of a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them in detail again here. In summary X was introduced to an investment via a group that included long term friends of his. He made the following deposits into a cryptocurrency wallet that was then sent to a group wallet:

- 6 December 2021: £500
- 6 December 2021: £9,000
- 7 December 2021: £9,000
- 8 December 2021: £9,250
- 9 December 2021: £9,250

When he eventually tried to withdraw the funds, the trader made excuses and delayed him. Eventually, X realised he had been the victim of a scam. He raised a scam claim with HSBC via a representative. However, HSBC did not uphold his claim.

X referred the complaint to our service and our investigator looked into it. They felt the first two payments were not unusual, but that the last three payments should have flagged as potentially fraudulent. And they felt that if this had happened, the scam would have been revealed. But they felt X should bear some responsibility for the loss so the refund should therefore be reduced by 50%.

X accepted the findings, however HSBC responded and did not agree. Because of this the complaint was passed to me for a decision.

I issued a provisional decision in which I explained, based on what I'd seen so far, I did not intend to uphold the complaint. My provisional decision read as follows:

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that X authorised the payments outlined above, as he thought they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that HSBC was obliged to follow his instruction and process the payments. Because of this, X is not automatically entitled to a

refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether HSBC did enough to try to keep X's account safe.

To do so, I have looked over X's account statements, to see if the payments in question were out of character when compared to his genuine account activity. I can see that X had made other high value payments to accounts in his name, so the value alone of these payments are not enough for me to say they were unusual. However, these payments were to a cryptocurrency wallet, and I think as the payments progressed, a pattern of spending began to emerge which I think was unusual. On balance, I think the volume of transactions by the third payment, coupled with the increase in value and the high value of the last two payments should reasonably have warranted further checks from HSBC. I've gone on to consider whether intervention from HSBC would have revealed the scam.

I've considered X's version of events about how he found the scam, what due diligence he carried out and what I understand of his mindset when he made the payments. I've seen the messages within the investment group he was a member of, and I can see a number of individuals expressed they'd had positive experiences with C and had received returns. X has said that he had long term friends within this group, so I think it's more likely he trusted their judgement at that time.

In addition, X has said he found an article online which was about C which gave a positive review, and named the trader he then dealt with. So, I can understand why he felt this was a legitimate company that he was dealing with and I think he would have been confident in his decision to invest with C. Considering all of this, I think it's unlikely that any possible scam warnings about investments that HSBC could have provided would have changed X's mind about making the payments. He was introduced to C via a group with people in it that he trusted, who said they had received returns, and his own research had led him to be confident he was dealing with a legitimate company. So, on balance, I think it's unlikely that any intervention from HSBC would have revealed the scam. So, I don't currently think HSBC needs to refund the payments in question.

HSBC responded and accepted my provisional findings.

X's representative responded and said that if HSBC had intervened as I set out in my provisional decision, X would have been able to take the necessary precautions to prevent the loss. They reiterated that he was a novice trader and HSBC could have advised him further. As they felt X would have been honest about the nature of these payments.

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've considered the additional comments raised by X's representative. I want to assure X that I've carefully reviewed everything available to me to reach an outcome I feel is fair.

As I explained in my provisional decision, I agree that HSBC should reasonably have carried

out further checks on the later payments, which would have included asking X further questions about the payments. I do not doubt that X would have been honest in his responses as he had no reason not to. I then have to consider whether any intervention would reasonably have revealed the scam.

There is not a prescriptive list of the type of questions that should be asked, but these can include things such as, 'how did you hear about the investment?', 'have you carried out checks on the company' and 'do you have control of the funds?'. As I explained in my provisional decision, X had found the company through trusted friends, via a group in which individuals had seen returns, and his research had shown positive results about the company. So, I think it's unlikely this would have raised concerns for X or HSBC.

It's possible some answers may have given HSBC cause for concern, in which case I would have expected them to give tailored scam warnings. But I explained why I feel that, considering X was particularly convinced by the scam, it's unlikely any scam warnings would have made him change his mind about making the payments in this particular case. So I am still of the opinion that HSBC is not required to refund the transactions in question.

My final decision

I do not uphold X's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 15 March 2024.

Rebecca Norris
Ombudsman