

## The complaint

Mr W complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he lost as the result of a scam.

Mr W has previously been represented by a third party. To keep things simple, I will refer to Mr W throughout my decision.

## What happened

Mr W was searching online to make an investment when he came across an investment opportunity with a business called Delta Trade (X). Mr W completed an online data caption form and was contacted by X.

Mr W carried out online research about X and found, as he expected, a mixture of good and bad reviews.

X persuaded Mr W to invest with it in cryptocurrency and advised him to download the screen sharing application AnyDesk, so it could help him with the investment process. This included setting up an account on X's trading platform, and a legitimate account in Mr W's own name with a genuine cryptocurrency exchange.

Mr W started to make payments into the investment via the cryptocurrency exchange. The platform Mr W was provided access to looked professional and Mr W was also able to withdraw funds from the account as he would have expected. This made Mr W feel confident that X was a genuine business.

Mr W was asked to make payments to make further withdrawals from the investment but after he made the final payment the website was taken down and X stopped communicating with him. It was clear Mr W had fallen victim to a scam.

Mr W made the following payments into the investment from his HSBC account via a legitimate cryptocurrency exchange:

Date	Payee	Payment Method	Amount
12 May 2021	Global Dlt	Debit Card	£250
21 July 2021	Foris Dax	Transfer	£2,500
12 August 2021	Foris Dax	Transfer	£2,000
26 October 2021	Foris Dax	Transfer	£8,500
22 March 2022	Foris Dax	Transfer	£7,543
30 July 2022	Foris Dax	Transfer	£4,000
29 August 2022	Foris Dax	Transfer	£1,458
8 November 2022	Foris Dax	Transfer	£1,586
16 November 2022	Foris Dax	Transfer	£1,496

In my provisional decision sent on 31 January 2024 I explained why I didn't think HSBC was responsible for Mr W's loss, and why this complaint shouldn't be upheld. I said:

*'It has not been disputed that Mr W has fallen victim to a cruel scam. The evidence provided by both Mr W and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mr W lost due to the scam.*

#### *Recovering the payments Mr W made*

*Mr W made a payment into the scam via his debit card, followed by several payments via transfer. 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.*

*Mr W was dealing with X, which was the business that instigated the scam. But Mr W didn't make the debit card payments to X directly, he paid a separate cryptocurrency exchange. This is important because HSBC would only have been able to process chargeback claims against the merchant he paid, not another party (such as X).*

*The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mr W's payments into cryptocurrency. Therefore, it 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 merchant Mr W paid.*

*When payments are made via the method of transfer the only option HSBC has to recover the funds is to contact the payee to see if any funds remain. As Mr W made the transfers into a cryptocurrency account in his own name before the funds were forwarded to X I don't think HSBC was able to recover the payments Mr W made.*

*With the above in mind, I don't think HSBC had any options available to it to recover the payments Mr W made.*

#### *Should HSBC have reasonably prevented the payments Mr W made?*

*It has been accepted that Mr W authorised the payments that were made from his account with HSBC, albeit on X's instruction. So, the starting point here is that Mr W 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 stepped into question Mr W about the payments he was making. And if it had questioned Mr W, would it have been able to prevent the scam taking place.*

*The first payments Mr W made into the scam were for relatively low values to a genuine business. So, I don't think it was unreasonable that HSBC didn't step in early in the scam to question Mr W about the payments he was making.*

*Mr W received an automated warning when he made lower payments into the scam via his*

*banking app, which I think was reasonable. He was advised to check if the company was FCA authorised, and if it wasn't, to seek independent financial advice before proceeding. At the time Mr W was making the payments Delta Trade was not an authorised firm. So, I can only assume Mr W didn't follow HSBC's advice and he didn't carry out the relevant checks.*

*Mr W went on to make larger payments into the scam. On 26 October 2021 Mr W made a transfer of £8,500. This payment was for a relatively high value and more than three times that of the previous payments Mr W had made. I think it would have been reasonable for HSBC to have stepped in at this stage and questioned Mr W about the payment. But I can't see that it did.*

*However, the next payment Mr W made into the scam on 22 March 2022 did trigger HSBC's fraud prevention systems and it did step into question Mr W. HSBC confirmed with Mr W that he had made the payment himself. It also told Mr W that the bank account number and sort code he was using had previously been reported as related to a scam.*

*Mr W confirmed he had read and understood the scam warnings he had received online. He also said he was investing in cryptocurrency with a company and had been for several months.*

*At the end of the conversation HSBC advised Mr W that based on the conversation it believed the investment to be a scam, and that if Mr W continued to make the payment HSBC would not be responsible and may not be able to recover the funds. Mr W confirmed he did want to continue with the payment and accepted HSBC would not be responsible.*

*Having listened to a recording of this call I think HSBC clearly advised Mr W that it thought he was being scammed, yet Mr W continued to make the payment having received this warning. If HSBC had stepped in earlier and warned Mr W that he could be experiencing a scam I think it's unlikely he would have acted differently and decided not to proceed with future payments.*

*I would not expect HSBC to prevent Mr W from making payments from his account as this is not its role. HSBC did make Mr W aware that he may have been being scammed yet his decision was to continue with the payment.*

*Before Mr W made the final payment into the scam on 16 November 2022, he spoke to HSBC again as his online account had been suspended and he explained that he no longer wanted to make a payment he had attempted a few days earlier as "HSBC didn't like it". But he later made another payment in relation to the scam.*

*I think it's clear from this call that Mr W recognised there was a risk attached to making the disputed payments, yet he continued to make another payment disregarding the perceived risk.*

*Overall, I think it's possible HSBC could have stepped in sooner to question Mr W about the payments he was making, but for the reasons I've explained above I don't think this would have made a difference. Despite Mr W receiving warnings from HSBC and even acknowledging the risk of the payments himself he continued to make payments as requested by X.*

*I don't think HSBC missed an opportunity to prevent the scam, and it is not responsible for his loss.'*

### **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.

Both HSBC and Mr W responded to my provisional decision, but neither provided anything new for me to consider so I see no reason to come to a different decision to that explained above.

### **My final decision**

Based on what I've said above and in my provisional decision I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 March 2024.

Terry Woodham  
**Ombudsman**