

The complaint

Mr M complains that HSBC UK Bank Plc Ltd won't refund money he lost when he was a victim of a scam.

Mr M is represented by a firm I'll refer to as 'A'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr M was contacted by a person that claimed to be a lawyer working for a firm I'll refer to as 'C'. The lawyer told Mr M they'd located funds that Mr M had previously lost to a scam several years ago and was willing to assist him in recovering them. Under the belief the person was a genuine lawyer, Mr M trusted them and went on to make the following payments, via legitimate crypto exchanges, to C:

Date	Transaction type	Amount
5 June 2023	Debit card	£26.53
12 June 2023	Debit card	£34.31
20 June 2023	Debit card	£25.85
3 July 2023	Debit card	£26.73
10 July 2023	Debit card	£26.52
18 July 2023	Debit card	£26.66
26 July 2023	Debit card	£27.65
7 August 2023	Debit card	£26.81
16 August 2023	Debit card	£28.00
25 August 2023	Debit card	£901.32
Total		£1,150.38

Mr M didn't receive the funds as expected and, at this point, realised he'd been scammed.

A complained to HSBC, on Mr M's behalf, on 12 October 2023 saying the payments were made as part of a scam. In short, they said:

- HSBC should've taken extra care to protect Mr M as he'd previously been a victim of a scam.
- Mr M allowed the scammer access to his computer through using AnyDesk, thereby comprising his account security.
- The crypto exchange(s) are well known to HSBC and so, they should've been aware the payments were being made towards a potential scam or fraud. This is because many scams and fraud occur through crypto trading – so HSBC should've been aware of this at the time.

- HSBC should've had concerns about the payments being made on a roughly weekly basis. And as they were spread out over the course of three months, HSBC had plenty of opportunities to contact Mr M to discuss them. The final payment (£901.32) was greater than any payment Mr M had previously made on his account in the months leading up to the scam.
- Mr M was allowed to make the payments without any restrictions or questioning about them. Had HSBC stepped in earlier, the total loss could have been significantly less.
- HSBC might argue that the starting point in law is they're not liable for a customer's loss as they authorised the transactions, even in instances where they're as a result of a scam. But they'd like to point out that the Financial Ombudsman are of the opinions that banks shouldn't take their customers authorisation instruction at 'face value' and should look at the wider circumstances of a transaction before processing it.
- HSBC has a primary duty to protect Mr M, but they failed to do that here. HSBC should've noticed that there was an anomalous pattern to Mr M's normal spending pattern and so, as part of this duty, they should've stopped the payment(s) until further verification from Mr M about the transactions was obtained.
- Mr M had no inclination to think he was being scammed by C.
- HSBC failed to meet the standards of the Contingent Reimbursement Model (CRM) code. Considering this, and HSBC's obligations to their customers, Mr M should be put back in the situation he would've been in had he not been misled to transfer funds by the scammer. And Mr M should be refunded under the CRM code.
- HSBC should refund £1,150.38 and pay 8% interest to Mr M.

HSBC didn't uphold the complaint. They said Mr M had confirmed he'd made the debit card transactions to his own crypto account that he opened and which he had full control of. So, they wouldn't be able to report them as fraudulent and they wouldn't be able to raise a chargeback claim – noting the service was provided. HSBC also explained that the payments weren't covered by the CRM code. They therefore wouldn't be refunding him.

The complaint was referred to the Financial Ombudsman. Our Investigator didn't however think HSBC had to do anything further. This was because, while she acknowledged Mr M had been the victim of a scam, she didn't think the payments were sufficiently unusual or suspicious enough to have expected HSBC to have carried out additional checks before processing them – as the pattern of payments wasn't consistent with fraud, nor did the values indicate a heightened risk of financial harm. Our Investigator also noted that Mr M had made over 50 other payments for similar amounts, spread across several weeks and months, to the crypto exchange in the prior two years – which Mr M hadn't raised with HSBC and so they weren't aware he'd been scammed before. Because of this, the payments would've appeared to HSBC as normal account activity for Mr M.

Our Investigator also explained that the only option of recovery was via chargeback - but this likely wouldn't have been successful as Mr M received the service from the crypto exchanges. So, she didn't think HSBC acted unfairly here either.

A confirmed Mr M didn't agree and requested his case be reviewed by an Ombudsman. The matter has therefore been passed to me to decide. Mr M added that this supposed lawyer tricked him into thinking his money was recoverable by showing a fake investment – which he didn't know was possible.

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'm sorry Mr M has been the victim of a scam. I appreciate he has lost a significant amount of money, from both this scam and the one he fell victim to previously. I therefore don't underestimate the impact this matter has had on him, and I understand why he's doing everything he can to recover his money. But while I'm sympathetic to Mr M's circumstances, as I fully accept he was deceived by C, I must consider whether HSBC is responsible for the loss he has suffered. I know this won't be the outcome Mr M is hoping for, but for similar reasons as our Investigator I don't think they are. And so, I don't think HSBC has acted unfairly by not refunding the payments. I'll explain why.

My first consideration is in relation to the CRM code which can offer a potential means of obtaining a refund following scams like this one. But while HSBC has signed up to the CRM code, the payments unfortunately aren't covered under it. This is because the CRM code doesn't cover debit card payments or payments made to an account held in a person's own name – which is what happened here. I've therefore considered whether HSBC should reimburse Mr M under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Mr M knowingly made the payments from his HSBC account and so, I'm satisfied he authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of his account, HSBC are expected to process Mr M's payments and he is presumed liable for the loss in the first instance.

However, taking into account the regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr M to HSBC (either individually or collectively) were unusual enough to have expected additional checks being carried out before the payments were processed.

When considering this, I've kept in mind that banks process high volumes of transactions each day. And that there is a balance for HSBC to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate. Here, the payments were made to legitimate crypto exchanges. And while there are known fraud risks associated with crypto, as scams like this have unfortunately become more prevalent, many individuals invest in crypto legitimately. Having looked at Mr M's prior account usage, it was typically used for low value day-to-day transactions. But, as our Investigator explained, Mr M had made a significant number of crypto transactions over the two years prior to this scam – many of which were of a similar value and often with about a week between them. I therefore wouldn't have expected HSBC to have identified this frequency of payment as out of character for Mr M.

While I accept the payment of £901.32 was higher in value than payments Mr M commonly made on his account, it isn't unusual for customers to make larger payments from time to time as part of normal account activity. Nor did this payment deplete Mr M's account balance or take him overdrawn. And so, I don't think the payments here, either individually or collectively, were of a monetary value or unusual enough compared to Mr M's typical account activity whereby I would've expected HSBC to have had sufficient reason to suspect Mr M was at risk of financial harm from fraud.

At which point, I think it's worth noting that I haven't seen anything to show Mr M told HSBC he'd fallen victim to the earlier scam he's mentioned. And so, while I'm aware that victims of

scams are often targeted again, HSBC wouldn't have had reason to identify Mr M as someone that might be more vulnerable to being scammed.

It follows that I think it was reasonable for HSBC to assume the payments were being made for legitimate crypto purposes. And so, I wouldn't have expected HSBC to have taken additional steps or carried out additional checks before processing the payments.

I've considered whether, on being alerted to the scam, HSBC could reasonably have done anything to recover Mr M's losses, but I don't think they could. The only possible option for recovery here, given the payments were made by debit card, would have been via a chargeback claim. But given these payments were for the legitimate purchase of crypto, I don't think a chargeback claim would have been successful as Mr M received the service he paid for. As such, I think it was reasonable for HSBC not to have raised a chargeback claim here.

I have a great deal of sympathy for Mr M and the loss he's suffered, as I appreciate it is significant sum of money to him. But it would only be fair for me to direct HSBC to refund his loss if I thought HSBC was responsible – and I'm not persuaded that this was the case. For the above reasons, I think HSBC have acted fairly and so I'm not going to tell them to do anything further.

My final decision

My final decision is that I do not 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 29 October 2024.

Daniel O'Dell
Ombudsman