

The complaint

Mr and Mrs P complain that HSBC UK Bank Plc (HSBC) is refusing to refund them the amount they lost as the result of a scam.

Mr and Mrs P are being represented by a third party. To keep things simple, I will refer to Mr and Mrs P 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, Mr and Mrs P received an email from what appeared to be a well-known trusted celebrity introducing them to a company called Golden Currencies (X) that specialised in cryptocurrency investment.

Interested in the opportunity Mr and Mrs P completed an online data caption form with their personal information and later received communication from X.

Mr and Mrs P were guided through the investment process using the remote access software AnyDesk and started to make payments in relation to the scam. Mr and Mrs P could see their investments were doing well and X convinced Mr and Mrs P to make larger payments which again appeared to give very good returns.

Mr and Mrs P appeared to have made over £100,000 from the investments and decided to make a withdrawal. However, before a withdrawal could be made Mr and Mrs P were told they would have to make a payment of £10,000 to the FCA, which was a money laundering requirement, and would be returned to them in addition to the withdrawal they had requested.

Having made the payment as requested Mr and Mrs P were contacted to make another payment for £10,000. Mr and Mrs P then called the FCA directly and were told they had been the victim of a scam.

Mr and Mrs P made the following payments from their HSBC account:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	1 June 2023	Mrs P	Transfer	£5,000.00
2	9 June 2023	Mrs P	Transfer	£3,000.00
3	14 July 2023	Mrs P	Transfer	£4,500.00
4	14 July 2023	Mrs P	Transfer	£4,600.00
5	17 July 2023	Mrs P	Transfer	£4,750.00
6	17 July 2023	Mrs P	Transfer	£5,400.00
7	18 July 2023	Mrs P	Returned	£4,750.00cr
8	18 July 2023	Mrs P	Returned	£5,400.00cr
9	19 July 2023	Wirex	Debit card	£1,529.85

Our Investigator considered Mr and Mrs P's complaint and thought it should be upheld in part. HSBC agreed but Mr and Mrs P didn't 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 Mr and Mrs P have fallen victim to a cruel scam. The evidence provided by both Mr and Mrs P and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mr and Mrs P lost due to the scam.

Recovering the payments Mr and Mrs P made

Mr and Mrs P made payments into the scam via debit card and 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 and Mrs P were dealing with X, which was the business that instigated the scam. But Mr and Mrs P didn't make the debit card payment to the scammer directly, they paid a separate company Wirex. This is important because HSBC was only able to process chargeback claims against the merchant they paid (Wirex), not another party.

The service provided by Wirex would have been to convert or facilitate conversion of Mr and Mrs P's payment into cryptocurrency. Therefore, Wirex 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 and Mrs P paid. As Wirex provided the requested service to Mr and Mrs P any chargeback attempt would likely fail.

When payments are made by transfer the only recovery option available to HSBC is to request a refund from the operator of the recipient's account of any funds that remain. As Mr and Mrs P made the transfers to accounts in Mrs P's name if any funds did remain in that account they would remain in her control.

With this in mind, I don't think HSBC had any reasonable options available to it to seek recovery of the payments made in relation to the scam.

Should HSBC have reasonably prevented the payments Mr and Mrs P made?

It has been accepted that Mr and Mrs P authorised the payments that were made from their account with HSBC, albeit on X's instruction. So, the starting point here is that Mr and Mrs P are 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 the payments were made. And if it had intervened, would it have been able to prevent the scam taking place.

The payments made in relation to the scam were going to an account in Mrs P's name so weren't identifiable as crypto related payments. It was also not unusual for Mr and Mrs P to make similar sized and even higher value payments from their account. So, I don't think the payments made from their account in relation to the scam would have appeared unusual to HSBC, or to have carried an elevated risk. So, I don't think it was unreasonable that HSBC didn't intervene when the transfers were made.

However, several calls did take place between Mr P and HSBC on 18 July 2023 as Mr P was having difficulty making a payment in relation to the scam. Mr P spoke to the payment fraud team and explained that he thought his card had been blocked.

Mr P explained he would be making a payment via his debit card to another account elsewhere that he had tried to make earlier in the day without success. Mr P went on to explain that Mr and Mrs P had been dealing in Bitcoin and made a six-figure sum of money and that he needed to make a £10,000 payment to release the money and that the £10,000 would then be refunded.

HSBC asked why he needed to transfer £10,000 as it sounds "dodgy". Mr P said because it was such a large sum a £10,000 payment was needed in relation to money laundering prevention.

HSBC asked Mr P to clarify the purpose of three previous payments he had made from the account. Mr P confirmed he was using Wirex to transfer money to a Bitcoin company he was now trying to make payments to total the £10,000 needed to release the funds he had discussed earlier in the call. Mr P said he had been trying several ways to make the payments as two external accounts had been blocked.

Mr P confirmed that at the time of making the payments he was speaking to someone at the Bitcoin company that had helped him make the money, and that he was helping him make the payments.

HSBC did say that the payment sounded "dodgy" and that it may not be able to recover the payments.

HSBC then went on to give a warning about impersonation scams and confirmed that Mr P was not being coached by anyone to make the payments. HSBC also covered other scam scenarios that were not relevant to the circumstances Mr P had described.

Considering Mr P had already described the reason for the payments he was making, and the description was very common of well-known cryptocurrency investment scams HSBC would have been aware of at the time, I think this type of warning was irrelevant and served no purpose in the circumstances.

From the circumstances described by Mr P I think it was relatively clear that he was likely falling victim to an investment scam and at the very least HSBC should have asked questions relevant to the situation Mr P had described.

Considering the clear description Mr P gave during this call and his openness around the purpose for the payments I think it is likely HSBC would have been able to uncover the scam

that was taking place and prevented any further loss.

HSBC is therefore responsible for all payment made from Mr and Mrs P's account in relation to the scam following this call.

Did Mr and Mrs P contribute to their 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 don't think it would be fair to say Mr and Mrs P contributed to the loss. I say this because they had limited experience in this type of investment and was lulled into a false sense of security by X who went to great lengths to appear to be legitimate.

Mr P was also honest with HSBC when it asked him questions about the payments which I think shows they were completely unaware of any red flags associated with the payments they were making.

Putting things right

To put things right HSBC UK Bank Plc should:

- refund the last payment Mr and Mrs P made in relation to the scam
- add 8% simple interest to the amount it pays Mr and Mrs P from the time the payment was made to the date it is refunded (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 Mr and Mrs P to accept or reject my decision before 1 November 2024.

Terry Woodham
Ombudsman