

The complaint

Ms B complains that HSBC UK Bank Plc (HSBC) is refusing to refund her the amount she lost as the result of a scam.

Ms B is being represented by a third party. To keep things simple, I will refer to Ms B 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, around June 2022 Ms B found an article online about investing in Amazon Bitcoin. Ms B cannot recall exactly where she found the article.

Ms B remembered seeing a lot of positive reviews online about the type of investment and carried out some further research. Ms B then came across a company called Crypto One Capital (X). Ms B registered her interest and provided a copy of her identification.

Ms B then received a call from X who explained the investment. X explained it would be making the investments for her and guaranteed a 250% return. Ms B agreed to make an initial payment of £250 from an account she held elsewhere.

Ms B made a profit on her initial investment and was persuaded by X to make a further payment of £3,000. After some time, X contacted Ms B again and convinced her to make a further payment of £1,000 which Ms B was happy to make based on the extensive returns she could see.

Ms B then attempted to make a withdrawal from the investment. X told Ms B she would receive a letter by post regarding a tax payment she would need to pay first. When Ms B received the letter, she called the company and was advised she was not required to pay any tax.

Ms B realised at this stage she had fallen victim to a scam. Ms B made the following payments in relation to the scam from her account with HSBC:

| Date | Payee | Payment Method | Amount |
|------------------|---------------------|----------------|--------|
| 25 August 2022 | Simplex_Paybis | Debit Card | £3,000 |
| 15 November 2022 | Doris Dax mtm limit | Transfer | £1,000 |

Our Investigator considered Ms B's complaint and didn't think it should be upheld. Ms B 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 Ms B has fallen victim to a cruel scam. The evidence provided by both Ms B and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Ms B lost due to the scam.

Recovering the payments Ms B made

Ms B made payments into the scam via transfer and 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.

Ms B was dealing with the scammer, which was the business that instigated the scam. But Ms B didn't make the debit card payment to the scammer directly, she paid a separate cryptocurrency exchange. This is important because HSBC was only able to process chargeback claims against the merchant she paid, not another party.

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Ms B'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 merchant Ms B paid.

When payments are made via the method of transfer HSBC has limited options available to it to seek recovery. HSBC could ask the receiving bank for a refund of any funds that remain in the account the funds were sent to. But Ms B made the payment in return for cryptocurrency to a genuine business so I think it's unlikely any funds would remain, and even if they did, they would remain in Ms B's control.

Should HSBC have reasonably prevented the payments Ms B made?

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

The payments Ms B made in relation to the scam were not significant in value and were being made to a genuine business. It wouldn't be reasonable for me to suggest that HSBC should intervene every time one of its customers makes a relatively low value payment to a new genuine business.

However, calls between Ms B and HSBC did take place around the times the payments were made, and HSBC has provided recordings of the calls it has been able to locate.

When Ms B made the first payment, she spoke to HSBC and explained she was trying to make a payment online for £3,000 and was calling to get the block removed. HSBC checked the card status and asked Ms B to try the transaction again and she confirmed the payment had been made.

Considering I don't think it was unreasonable that this payment didn't trigger HSBC's fraud prevention systems at this time, and Ms B was calling to unblock her card, I don't think it was unreasonable that the details of the payment were not discussed in more detail.

When Ms B made the second payment from her debit card another conversation took place between Ms B and HSBC. During this call the payment was discussed in more detail. Ms B confirmed she had been recommended the investment by a friend, she had not been asked by anyone to make the payment and she had sought independent advice when making the previous payment of £3,000. In addition to this Ms B confirmed she was not promised high returns.

The information Ms B gave above contradicts the information she provided as part of her complaint. I don't think it was unreasonable that after receiving this information, that HSBC didn't probe further or stop the payment from being made. So, I don't think HSBC is responsible for Ms B's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 May 2024.

Terry Woodham
Ombudsman