

The complaint

Ms S has complained that HSBC UK Bank Plc won't refund the money she lost after falling victim to a scam.

What happened

Both sides are most familiar with the case, so I'll summarise things more briefly.

In late 2023, Ms S was introduced to a cryptocurrency investment scheme through people she knew. Unfortunately, this turned out to be a scam. Over the course of a month, Ms S sent the scammers over £5,000 by making card payments from her HSBC account to a crypto exchange and sending the crypto onto the scammers.

Ms S discovered this was a scam and reported the matter to HSBC. HSBC explained that they were unable to recover the funds, and they didn't think they were otherwise liable for the loss. They did pay Ms S £75 compensation for some poor customer service.

Our Investigator looked into things independently and didn't uphold the complaint. Ms S asked for a final decision, so the complaint's 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.

I understand that Ms S fell victim to a scam, and so she has my sympathy. I appreciate this can't have been an easy time for her, and I appreciate why she feels that her money should be returned. I'm grateful to Ms S for being open and candid with us about how she's felt. It's worth keeping in mind that it's the scammers who are primarily responsible for what happened, and who really owe Ms S her money back. But I can only look at what HSBC are responsible for. Having carefully considered everything that both sides have said and provided, I can't fairly hold HSBC liable for Ms S's loss. I'll explain why.

First, I must clarify that we're not the regulator – that's the Financial Conduct Authority (FCA). So we don't regulate banks or set the way they work more widely. We're an informal dispute resolution service, here to decide individual complaints about individual situations. So while I have read and understood Ms S's comments about how she thinks HSBC should work differently more generally, and her concerns about them not querying some unrelated non-scam payments, this decision will focus on what happened in this particular situation.

It's not in dispute that Ms S authorised the payments involved. So although she didn't intend for the money to end up with scammers, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, HSBC had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments which a customer authorises them to make.

HSBC should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether HSBC should have done more in Ms S's case.

However, I don't think the payments involved were so unusual or out of character that HSBC needed to intervene. While this was unfortunately a substantial amount to lose, the individual payments were spread out over a month and were each not large enough to have been of particular concern, especially for this account. Ms S had made a number of payments of similar or larger amounts in the preceding period, and these payments did not drain her account – there was still a healthy balance after each one. So even though these went to a crypto site, and even though HSBC do sometimes limit crypto payments, I do not find that they needed to intervene in this particular situation.

Next, I've considered what HSBC did to try to recover Ms S's money after she told HSBC about the scam. Unfortunately, as Ms S had sent the money to the crypto site and then onto the scammers, the funds were already gone and it wasn't possible for HSBC to recover them. As these were card payments, they were not covered by the CRM Code for scams. And there was no chargeback reason which would've been appropriate here. A chargeback would've been a claim against the exchange rather than the scammers. And the exchange provided the service they were supposed to. There was no realistic prospect of success for a chargeback, and chargebacks are voluntary. So HSBC didn't need to try one in this case.

So while I'm very sorry to hear about what the scammers did to Ms S, I don't think HSBC can fairly be held responsible for her loss. And so I can't fairly tell HSBC to refund Ms S's money in this case.

Finally, both sides accept that HSBC's customer service fell short – for example, they didn't explain things well and transferred Ms S around. I appreciate this will have added some acute stress onto an already stressful time. HSBC have apologised, given feedback to the relevant management, and paid Ms S £75 compensation. Taking into account the impact of those customer service issues, along with our guidelines for compensation, I find that to be a fair way to resolve the customer service failure.

My final decision

For the reasons I've explained, I don't uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 February 2025.

Adam Charles
Ombudsman