

## The complaint

Mr R complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he says he lost having fallen victim to three separate scams.

Mr R is being represented by a third party. To keep things simple, I will refer to Mr R 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.

### Scam 1

Mr R tells us that he received an email in September 2020 from a company called Coinalrec (X). The email explained that X could recover funds Mr R had previously lost investing and trade on his behalf.

Mr R tells us he carried out an online search on X and didn't find anything negative to make him feel X was not legitimate. Interested in the opportunity Mr R reached out to X and was contacted by several people from X.

X appeared very professional and knowledgeable building a trusting rapport with Mr R. Mr R was required to provide identification documents to open an account on X's platform which made the experience appear even more genuine.

X then asked Mr R to open several accounts with cryptocurrency exchanges and download the remote access software AnyDesk so that X could show Mr R how his trading account and investments were performing.

Mr R tells us he can no longer recall exactly what each payment he made into the investment was for, but by the end of the investment process X had told him his funds were stuck in Blockchain. Mr R contacted Blockchain, and the scam was uncovered.

Mr R made the following payments from his HSBC account bank account and credit card. Mr R has only complained about the payments he made using his debit card:

Date	Payee	Payment Method	Amount
4 September 2020	Simplex-Paybis	Credit Card	£1,300.00
4 September 2020	Simplex-Paybis	Credit Card	£2,600.00
4 September 2020	RNKO_PB	Credit Card	£7.86
4 September 2020	Transaction fee		£0.24
4 September 2020	RNKO_PB	Credit Card	£1,573.20
4 September 2020	Transaction fee		£47.04
4 September 2020	RNKO_PB	Credit Card	£1,179.90
4 September 2020	Transaction fee		£32.44
4 September 2020	RNKO_PB	Credit Card	£2,595.79

4 September 2020	Transaction fee		£71.38
4 September 2020	RNKO_PB	Credit Card	£936.06
4 September 2020	Transaction fee		£25.74
4 September 2020	Jubiter.com	Debit Card	£1,000.00
4 September 2020	Jubiter.com	Debit Card	£800.00
5 September 2020	Mr R reports scam		
18 September 2020	Declined payment to Simplex-Paybis	Debit Card	£1,950
28 September 2020	HSBC write to Mr R to decline fraud claim		
5 October 2020	Banxa	Debit Card	£3,500.00
12 October 2020	Banxa	Debit Card	£2,845.50
12 October 2020	Transaction fee		£78.25
12 October 2020	Banxa	Debit Card	£3,076.21
12 October 2020	Transaction fee		£84.59
13 October 2020	Banxa	Debit Card	£2,321.98
13 October 2020	Transaction fee		£63.85
13 October 2020	Banxa	Debit Card	£2,554.18
13 October 2020	Transaction fee		£70.23
22 October 2020	Banxa	Debit Card	£459.14
22 October 2020	Transaction fee		£12.62
22 October 2020	Banxa	Debit Card	£3,902.66
22 October 2020	Transaction fee		£107.32
16 November 2020	Buy Digital Asset	Debit Card	£200.00
16 November 2020	Buy Digital Asset	Debit Card	£800.00
19 November 2020	Banxa	Credit Card	£3,789.60
19 November 2020	Transaction Fee		£113.31
19 November 2020	Banxa	Credit Card	£3,789.60
19 November 2020	Transaction fee		£113.31
23 November 2020	Banxa Intervention		
23 November 2020	Banxa	Credit Card	£2,200.00
23 November 2020	Banxa	Credit Card	£4,700.00
27 November 2020	Mr R speaks to X the conversation suggests end of scam		
4 December 2020	Simplex-Paybis	Credit Card	£440.00
12 December 2020	Xoom	Credit Card	£2,697.49
22 January 2021	Bitstamp	Credit Card	£2,500.00
23 January 2021	Bitstamp	Bill Payment	£3,800.00
25 January 2021	Bitstamp	Credit Card	£1,831.90

## Scam 2

In February 2022 Mr R says he was looking online about how he could recover his lost funds when he came across CryptoRecovery.Biz (Y). Y advertised itself as being specialists in financial and cyber fraud.

Mr R again carried out his own online research and was unable to find anything negative about Y. As Y looked professional and Mr R was keen to recover the funds he had lost, Mr R decided to take up the services that were offered which included a promise to recover Mr R's lost Bitcoin.

Having built up a trusting rapport, Mr R made multiple payments as directed by Y in relation to general fees, solicitor fees and expenses.

After making a final payment as directed by Y, Mr R tells us he spoke to his children about the recovery attempts and the scam was uncovered.

Mr R made the following payments from his HSBC account. Mr R has only complained about the payments he made using his debit card:

Date	Payee	Payment Method	Amount
23 February 2022	Cryptopay	Debit Card	£1,500.00
25 February 2022	Cryptopay	Debit Card	£10.00
25 February 2022	Cryptopay	Debit Card	£10.00
25 February 2022	CPS Solutions OU	Bill Payment	£10.00
26 February 2022	CPS Solutions OU	Credit	- £1,497.03
11 May 2022	Cryptopay	Debit Card	£400.00
16 May 2022	Cryptopay	Debit Card	£730.00
1 June 2022	Cryptopay	Debit Card	£400.00
19 July 2022	Cryptopay	Debit Card	£730.00
21 July 2022	Cryptopay	Debit Card	£800.00
12 August 2022	Cryptopay	Debit Card	£417.00
1 September 2022	Cryptopay	Debit Card	£158.00
5 September 2022	Cryptopay	Debit Card	£262.00
5 September 2022	Cryptopay	Debit Card	£314.00
15 September 2022	Cryptopay	Debit Card	£475.00
16 September 2022	Cryptopay	Debit Card	£263.00
20 September 2022	Cryptopay	Debit Card	£443.00
28 September 2022	Cryptopay	Debit Card	£331.00
4 October 2022	Cryptopay	Debit Card	£330.00
7 October 2022	Cryptopay	Debit Card	£331.00
12 October 2022	Cryptopay	Debit Card	£330.00
28 October 2022	Cryptopay	Debit Card	£930.00
15 November 2022	Cryptopay	Debit Card	£520.00
22 November 2022	Cryptopay	Debit Card	£1,564.00
9 December 2022	Cryptopay	Debit Card	£261.00
23 December 2022	Cryptopay	Debit Card	£60.00
23 December 2022	Cryptopay	Debit Card	£60.00
29 December 2022	Cryptopay	Debit Card	£60.00
10 January 2023	Cryptopay	Debit Card	£887.00
19 January 2023	Cryptopay	Debit Card	£430.00
6 February 2023	Cryptopay	Debit Card	£708.00
6 February 2023	Cryptopay	Debit Card	£709.00
8 February 2023	Cryptopay	Debit Card	£315.00
27 February 2023	Cryptopay	Debit Card	£869.00
7 March 2023	Cryptopay	Debit Card	£2,520.00
15 March 2023	Cryptopay	Debit Card	£1,579.00
13 April 2023	Cryptopay	Debit Card	£4,620.00

### Scam 3

Mr R tells us that in January 2023 he was contacted by a representative for a company called Bitcity (Z) by phone. Z explained it could help Mr R invest and trade on his behalf. Z

again appeared very genuine and knowledgeable building a trusting rapport with Mr R referring to himself as Mr R's financial advisor.

Mr R was directed by Z to open an account with it supplying his personal information as part of the process. Once the account was open Mr R was able to see a professional looking platform which added to the belief he was dealing with a genuine business.

Mr R downloaded the remote access software AnyDesk so that Z could show him how his trading account and investments were performing.

When Mr R made the final payments, he was told that Blockchain had blocked the payments. Mr R tells us he tried to discuss this in more detail with Z and it became clear he had fallen victim to another scam.

Mr R made the following payments from his HSBC account using his debit card.

Date	Payee	Payment Method	Amount
28 January 2023	Binance	Debit Card	£88.00
6 February 2023	Cryptopay	Debit Card	£708.00
27 February 2023	Binance	Debit Card	£1,450.00
13 April 2023	Binance	Debit Card	£1,420.00
14 April 2023	Binance	Debit Card	£1,450.00
14 April 2023	Binance	Debit Card	£4,600.00

Our Investigator considered Mr R's complaint and didn't think it should be upheld. Mr R 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.

#### *Recovering the payments Mr R made*

Mr R has complained about the payments he made via his 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.

Unfortunately, by the time Mr R made his complaint to HSBC most of the payments fell outside of the allowed time to raise a chargeback. But the chargeback process was also unlikely to be successful for the remaining payments.

I say this because for each payment Mr R was dealing with either X, Y or Z. But Mr R didn't make the debit card payments to them directly, he paid separate cryptocurrency exchanges. This is important because HSBC was only able to process chargeback claims against the merchants he paid, not another party.

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr R'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 doesn't give rise to a valid chargeback claim against the merchants Mr R paid. As the cryptocurrency exchanges provided the requested service to Mr R any chargeback attempt would likely fail.

*Should HSBC have reasonably prevented the payments Mr R made?*

It has been accepted that Mr R authorised the payments that were made from his account with HSBC. So, the starting point here is that Mr R 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 intervened when Mr R made the payments. And if it had intervened, would it have been able to prevent Mr R's loss.

Not every complaint referred to us and categorised as an investment trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to fraud.

### *Scam 1*

There is limited information available around the time Mr R says he fell victim to the first scam. However, even if I accept Mr R had fallen victim to a scam, I still don't think it would be fair to say that HSBC was responsible.

I think the multiple payments on the 4 September 2020 should have caused HSBC concerns and it should have intervened at this point. But Mr R did call the following day to report a scam. Mr R explained he had been scammed by an individual who had told Mr R he had frozen funds in a Trader King account and that he would have to pay for them to be released. This version of events is different to what he explained to our service.

Even after making this call Mr R continued to make payments in relation to this said scam. Mr R has not provided any reasonable explanation as to why he continued to make the payments knowing he had already been scammed.

Information on file shows that X told Mr R not to tell Banxa when it intervened later in the payments that it was involved. This didn't seem to concern Mr R.

Emails between Mr R and X also stopped around the end of November 2020 which appears to be another time Mr R would have realised he had fallen victim to a scam, yet he continued to make payments.

Given the above, even if I was to say HSBC should have intervened when Mr R made any of the payments, I think it's unlikely Mr R would have listened to any warning or stopped making payments. Mr R appears to have been aware of the scam yet continued to make payments anyway. So, I don't think HSBC missed an opportunity to prevent Mr R's loss and it is not responsible.

### *Scam 2*

There is limited information available around the time Mr R says he fell victim to the second scam either. However, even if I accept Mr R had fallen victim to a scam, I still don't think it would be fair to say that HSBC was responsible.

The payments Mr R has complained about are spread over a year and were not individually of such a significant value that I would have expected any of the payments to trigger HSBC's fraud prevention systems prompting it to intervene.

Although it does appear that an intervention call took place around 6 October 2022, neither Mr R nor HSBC is able to evidence what the content of the call was. Given the value of the payment being made on the day I think it's likely HSBC would have checked Mr R was making the payment himself, and I think this level of intervention would be reasonable in the circumstances.

Given the above I don't think HSBC missed an opportunity to prevent Mr R's loss and it is therefore not responsible.

### *Scam 3*

Mr R has told us that he was contacted by Z and told it would invest and trade on his behalf. However, the information provided by Mr R in the form of chat history shows this was in fact a recovery scam.

By the time Mr R fell victim to this scam HSBC would have had a greater understanding about cryptocurrency scams in general. So, although Mr R had previously made payments to cryptocurrency exchanges, I think that by the time he made the last payment of £4,600 HSBC should have had concerns and intervened.

I would have expected the intervention to come in the way of a tailored written warning relevant to cryptocurrency scams. However, as it is clear Mr R was falling victim to a recovery scam, I think it's unlikely such a warning would have applied to his circumstance and that this would have been effective in preventing the payment being made.

So, given the above I don't think HSBC missed an opportunity to prevent Mr R's loss and it is not responsible.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 June 2024.

Terry Woodham  
**Ombudsman**