

The complaint

Mr B complains that HSBC UK Bank Plc is refusing to refund him the amount he lost as the result of a scam.

Mr B is being represented by a third party. To keep things simple, I will refer to Mr B throughout my decision.

What happened

Mr B was looking to invest in cryptocurrency and received an unsolicited message via Telegram from a business called Ginko (X). X explained an investment opportunity to Mr B.

Mr B was presented with a professional looking website for X and was required to provide identity documents so he could set up an account which made X appear professional and legitimate.

Mr B tells us he was added to a Telegram group and communicated with X via phone, WhatsApp and Telegram

To make payments into the investment Mr B was required to make payments to the legitimate cryptocurrency exchange Crypto.com, and then onto X.

Mr B says he realised he had fallen victim to a scam when he was asked to make further payments in relation to tax before he could withdraw his profits.

Mr B made the following payments into the scam from his HSBC account:

Date	Payee	Payment Method	Amount
22 November 2022	Crypto.com	Debit Card	£4,897.86
5 December 2022	Crypto.com	Debit Card	£8,004.14
23 December 2022	Crypto.com	Debit Card	£6,489.16
13 January 2023	Crypto.com	Debit Card	£6,694.35
16 January 2023	Crypto.com	Debit Card	£3,089.70
27 February 2023	Crypto.com	Debit Card	£8,908.64
6 March 2023	Crypto.com	Debit Card	£5,149.50
7 March 2023	Crypto.com	Debit Card	£5,149.50

In my provisional decision sent on 15 March 2024 I explained why I didn't think HSBC was responsible for Mr B's loss, and why this complaint shouldn't be upheld. I said:

'It has not been disputed that Mr B has fallen victim to a cruel scam. The evidence provided by both Mr B and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mr B lost due to the scam.'

Recovering the payments Mr B made

Mr B made payments into the scam 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.

Mr B was dealing with X, which was the business that instigated the scam. But Mr B didn't make the debit card payments to X directly, he paid a separate cryptocurrency exchange (Crypto.com). This is important because HSBC was only able to process chargeback claims against the merchant he paid (Crypto.com), not another party.

The service provided by Crypto.com would have been to convert or facilitate conversion of Mr B's payments into cryptocurrency. Therefore, Crypto.com 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 B paid. As Crypto.com provided the requested service to Mr B any chargeback attempt would likely fail.

Should HSBC have reasonably prevented the payments Mr B made?

It has been accepted that Mr B authorised the payments that were made from his account with HSBC, albeit on X's instruction. So, the starting point here is that Mr 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 stepped into question Mr B about the payments he was making. And if it had questioned Mr B, would it have been able to prevent the scam taking place.

The first payment Mr B made into the scam from his HSBC account was being made to a legitimate business and was not for a significant value, so I don't think it was unreasonable that this payment didn't trigger HSBC's fraud prevention systems prompting it to step in.

The second payment Mr B made in relation to the scam was significant in value and was being made to a cryptocurrency exchange. I think this payment should have triggered HSBC's fraud prevention systems prompting it to step in and question Mr B about what the payment was for. But I don't think this would have made a difference.

Our Investigator said there was no evidence Mr B had been coached on what to say to HSBC had it asked him questions about the payments he made in relation to the scam, so found, had HSBC intervened and questioned Mr B it was likely the scam would have been uncovered.

However, at the time our Investigator made their findings Mr B had only provided limited evidence of the conversations between X and himself. Mr B has since provided further evidence of the chats that took place.

Mr B took out a loan part way through investing with X and gave the reason for the loan as "home improvements". Mr B has also told us this loan was for home improvements.

However, I think the loan was most likely taken to fund the payments he was making to X.

Throughout the chat transcript provided by Mr B it is clear that X was pressuring Mr B to raise funds by loaning from banks and friends. It isn't possible for me to know what conversations took place outside of the chat transcript but when talking about the loan that had been taken out successfully Mr B said:

*"To get the personal loan I said it was from home improvement, Building work"
Within a few days of receiving the loan payment into his HSBC account Mr B started making payments into the scam. Although Mr B didn't pay the full amount of the loan into the scam, I think it's most likely Mr B took out the loan with the intention of paying it into the scam.*

Mr B gave incorrect information on the loan application stating the reason for the loan was for home improvements I think this shows Mr B was willing to provide false information to fund the payments he was making in relation to the scam.

There is also evidence within the chat that Mr B was being coached by X about what to say if questioned by the bank about the payments for example X said:

"The bank will include this payment as a risky payment and you will need to explain this to the bank and explain that it is your personal investment or ask the bank to cancel the order."

"I think you should talk to the bank and explain that it's your personal investment or just a payment for everyday life, but I wouldn't advise you to say it's an investment, which could lead to a deeper investigation by the bank."

"Talk to your bank to resolve the issue, but do not involve the investment as this will cause the bank to be unhappy."

"Avoid paying large amounts as this will alert the bank as we have never paid more than £10,000 before and it has always been very smooth."

Mr B responded to one of X's messages saying:

"I don't want to try the 15 yet. Will look to suspect in transaction attempts. Will try later or tomorrow morning."

Mr B tells us he said this because X told him larger payments would take longer to process. But based on the evidence I have seen I think it's clear X was telling Mr B to mislead HSBC to get the payments processed.

After these messages from X telling Mr B to mislead the bank, Mr B continued to make large payments as directed by X, so I think it's reasonable to assume Mr B was comfortable in the knowledge that X had advised him to give incorrect information if questioned and based on Mr B's previous actions that he was willing to mislead HSBC if it questioned him about the payments.

Had HSBC intervened as I think it should have done for the second payment Mr B made into the scam, and some of the further larger payments. I think it's likely Mr B would have complied with what X had told him and given dishonest answers to the questions it posed. This would have hindered HSBC's ability to warn Mr B about the potential of the payments he was making being in relation to a scam.

I don't think HSBC would have been able to uncover the scam had it intervened as it should have. So, HSBC did not miss an opportunity to prevent the scam and it's not responsible for

Mr B's loss.'

Mr B responded to my provisional decision. In summary he said there were clear red flags that should have prompted HSBC to intervene when he attempted to make some of the payments.

Mr B also said that although it was noted that the scammer attempted to coach him in what to say to HSBC, there was no evidence he intended to mislead HSBC when making the payments, and that the fact he provided an incorrect reason for taking the loan does not diminish HSBC's responsibilities.

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 have thought about what Mr B has said in response to my provisional decision. Firstly, as I said in my provisional decision, I think HSBC should have intervened at the point Mr B made the second payment into the scam.

However, I still can't agree that any questioning by HSBC about the payments would likely have uncovered the scam and prevented Mr B's loss. As I explained in my provisional decision X told Mr B several times to be dishonest if questioned by HSBC and Mr B even said he didn't want larger payments to look suspicious.

When Mr B was told by X to be dishonest to HSBC he didn't stop making the payments, he continued to make them as requested. I think this shows Mr B was most likely willing to be dishonest if questioned by HSBC and disguised the purpose of the payments he was making.

So, with the above in mind, and what I said in my provisional decision, I still don't think HSBC missed an opportunity to prevent the scam and it is not responsible for Mr 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 Mr B to accept or reject my decision before 17 May 2024.

Terry Woodham
Ombudsman