

## The complaint

Mr K complains that HSBC UK Bank Plc won't refund several payments he says he made and lost to a scam.

## What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr K complains that from February 2023 he made nine payments from his HSBC account to what he thought was a legitimate investment company. The first payment was made as a transfer and then the remaining eight by debit card.

<b>Payment Number</b>	<b>Date</b>	<b>Amount</b>
Payment 1	01 February 2023	£740
Payment 2	02 February 2023	£1,030
Payment 3	15 February 2023	£1,000
Payment 4	15 February 2023	£1,000
Payment 5	15 February 2023	£500
Payment 6	22 February 2023	£1,050
Payment 7	25 February 2023	£390
Payment 8	07 March 2023	£1,000
Payment 9	03 April 2023	£430
Total		£7,140

Mr K says that in January 2023 he was looking for ways to increase his income. He came across an advert on the internet promoting Bitcoin investments and after inputting his details, he was then contacted by the scammer who explained how to invest.

Mr K says he did some research and he found positive reviews on the company's website and found the website was very legitimate and looked like other companies he'd seen.

Mr K says following each payment, his account balance increased and so he believed that if he was to invest more, he would make more.

It was only when he then decided that he wanted to withdraw his profits that he realised there was a problem. The scammer advised him that in order to make a withdrawal, he would be required to pay withdrawal fees. It was at this point that he realised that he had been scammed. So, Mr K raised this with HSBC.

HSBC looked in the complaint but didn't uphold it. It didn't think it had done anything wrong by allowing the payments to go through. So, Mr K brought his complaint to our service.

Our investigator looked into the complaint but didn't uphold it. Our investigator didn't find the payments were suspicious or unusual enough to trigger any of HSBC's automatic fraud detection systems.

As Mr K didn't agree with the investigator's view, the complaint's been passed to me for a final decision.

### **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.

Having done so, I've come to the same outcome as the investigator for largely the same reasons. I'll explain why.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

HSBC would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr K is presumed liable for the loss in the first instance, in circumstances where he authorised the payment. That said, as a matter of good industry practice HSBC should have taken proactive steps to identify and help prevent the transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

Having considered the amount of money sent to the scammer, I agree with the investigator when she said that it doesn't look unusual when it's considered against Mr K's previous spending. Mr K has made payments on more than one occasion over the last 12 months of a similar size. So, I'm satisfied that payments of this size wouldn't look sufficiently out of character for this account and wouldn't have triggered HSBC's payment checking process.

Since 1 January 2023 I'd expect HSBC to have attached greater risk to crypto related payments like this but still, given that not all crypto-related payments are made as a result of a scam, and given the amount the payments were for and how they were spread out, this still doesn't persuade me that HSBC reasonably ought to have been expected to have intervened.

I've also checked the official organisations that publish warnings about merchants that operate in the UK and abroad, to check if there were any warnings about who Mr K paid that ought to have triggered HSBC's fraud prevention systems. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or at risk of scamming

individuals.

There were no such warnings about the merchants Mr K paid. So, this is another reason why I don't think the payments ought to have been automatically stopped or triggered any warnings by HSBC.

### *Recovery*

As the payments were made by faster payment and by debit card, I've considered the recovery process separately.

After the payments were made, I couldn't reasonably expect HSBC to have done anything further until Mr K told HSBC that he had been scammed.

I haven't seen any evidence that HSBC attempted to recover the funds from the faster payment for Mr K. Mr K made this payment to a legitimate crypto exchange account in his name. So, HSBC could only have tried to recover it from Mr K's own crypto account. However, it appears the funds would by then already have been moved on and lost to the scammers – such that they wouldn't have been available for HSBC to recover.

After the debit card payments were made, the only potential avenue for recovery of the payments would have been through the chargeback scheme. The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. HSBC is bound by the card scheme provider's chargeback rules. Whilst there is no 'right' to a chargeback, I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding. But a chargeback can only be made within the scheme rules, 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, the chargeback rules don't cover scams.

In the circumstances of this complaint, I'm satisfied that a claim would've unlikely been successful. Mr K paid a legitimate crypto exchange, and he would have received a service from the crypto exchange. Mr K's disagreement is with the scammer, not the crypto exchange. And so, it would not have been possible for HSBC to process a chargeback claim against the scammer, as Mr K did not pay them directly.

So, I don't think Mr K had any reasonable prospect of success if HSBC were to have processed chargeback claims against the crypto exchange. This means I can't say that HSBC acted unfairly when it considered Mr K's chargeback claim.

Mr K feels that HSBC should refund the money he lost due to the scam. I understand that this will have been frustrating for him, but I've thought carefully about everything that has happened, and with all the circumstances of this complaint in mind I don't think HSBC needs to pay Mr K any compensation. I realise this means Mr K is out of pocket and I'm really sorry he's lost this money. However, for the reasons I've explained, I don't think I can reasonably uphold this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 September 2024.

Tom Wagstaff  
**Ombudsman**