

The complaint

Mr H via a representative complains that HSBC UK Bank Plc (“HSBC”) won’t refund the money he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here.

In November 2023, Mr H came across a scheme offering investment in crypto with a company I will call B.

Mr H then made the following debit card payments from his HSBC account;

Transaction Number	Date	Amount
1	4 November 2023	£100
2	7 November 2023	£333
3	14 November 2023	£1,500
4	17 November 2023	£2,000

Mr H realised he had been scammed when he was unable to withdraw the profits that he had made.

I issued a provisional decision on 17 February 2025 in which I said the following;

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

It isn’t in dispute that Mr H has fallen victim to a scam here, nor that he authorised the disputed payments he made to B (where his funds were subsequently transferred on to the scammers). The payments were requested by him using his legitimate security credentials provided by HSBC, and the starting position is that banks ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I’ve considered whether HSBC should have done more to prevent Mr H from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character for that account holder.

The investigator has indicated that he believed that HSBC should have intervened during the final transaction and provided a tailored written warning and this would have stopped the scam. But I do not agree.

I am not persuaded that the payments were of a sufficient size on their own or created a pattern indicative of a scam to have prompted any intervention from HSBC. I am also mindful that Mr H had in the past made payments to a crypto exchange. So overall I don't think that HSBC needed to intervene during this scam and given this I do not think that it could have uncovered or prevented the scam. So, I currently do not intend to uphold this complaint."

Recovery

I've also thought about whether HSBC could have done more to attempt to recover the payments after Mr H reported the fraud. The Contingent Reimbursement Model ("CRM") does not apply to debit card payments.

I also don't consider HSBC ought to have attempted a chargeback claim, as Mr H made payments to his own crypto account for the purchase of crypto and he seems to have received this before he forwarded it on to B. So, he got what he paid for."

HSBC did not provide any additional information in relation to the provisional decision. Mr H's representative responded and raised a number of points including the following;

- The rationale for overturning the investigator's decision contradicts regulatory requirements that mandate banks to protect their clients from financial harm.
- Mr H made 12 crypto payments in a short timeframe so they should have looked irregular.
- If HSBC had intervened and provided warnings then my findings would be understandable
- HSBC admitted that it could have done more and it should have intervened during the scam.

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.

Firstly, I should explain that in broad terms, the starting position at law is that banks are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions, banks have a contractual duty to make payments in compliance with the customer's instructions.

I accept that banks should intervene when it is suspected that someone is at a heightened risk of being scammed. But there is a balance to be had. HSBC cannot intervene with every crypto related payment, and I would only expect it to intervene if the individual payments were large enough or created a pattern sufficiently indicative of a scam.

In this instance as Mr H's representative has pointed out, Mr H had sent money to a crypto exchange in the months prior to the scam. This meant that the payments that related to the scam would not have flagged as unusual as Mr H had a history of sending funds to crypto related sites. The payments were spread out over a number of days and were not, in my view individually large enough for me to have expected HSBC to have intervened. Given this I don't think that HSBC did anything wrong by not intervening, so I don't think that it could have uncovered or prevented the scam.

I note Mr H's representative's comments that 12 payments were made in a short timeframe, but I should highlight that I am only looking at whether HSBC did anything wrong in relation to the above payments.

In relation to the final point above, HSBC has not admitted liability or said that it should have intervened in fact they accepted the investigators findings as a gesture of goodwill and specifically said that this did not mean they accepted liability.

I appreciate this will likely come as a disappointment to Mr H, and I'm sorry to hear he has been the victim of a scam. However, whilst I have a great deal of sympathy for the situation that Mr H found himself in, I'm not persuaded that HSBC can fairly or reasonably be held liable for his loss in these circumstances.

My final decision

For the reasons given above and in my provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 April 2025.

Charlie Newton
Ombudsman