

The complaint

Mr P complains that HSBC UK Bank Plc (“HSBC”) hasn’t protected him from losing money to an investment scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mr P has explained that in October and November 2023 he made five debit card payments totalling £5,937 from his HSBC account for cryptocurrency which he ultimately then lost to an investment scam.

Mr P got in touch with HSBC. Ultimately, HSBC didn’t reimburse Mr P’s lost funds, and Mr P referred his complaint about HSBC to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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 decided to not uphold Mr P’s complaint for materially the same reasons as our Investigator.

First, let me say, I’m sorry if Mr P has been the victim of a scam here – he has my natural sympathy. Ultimately, however, Mr P would have suffered his loss because of fraudsters, and this doesn’t automatically entitle him to a refund from HSBC. It would only be fair for me to tell HSBC to reimburse Mr P his loss (or part of it) if I thought HSBC reasonably ought to have prevented the payments (or some of them) in the first place, or HSBC unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

Prevention

I’m satisfied Mr P authorised the relevant payments. 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 P is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice HSBC should have taken proactive steps to identify and help prevent 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 HSBC 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 (allowing customers ready access to their funds).

Bearing this in mind, I’ve thought about whether HSBC’s dealings with Mr P were fair and reasonable, when he instructed these payments and HSBC processed them.

Losses to cryptocurrency investment fraud have recently been such that I would reasonably expect HSBC, from 1 January 2023, to have recognised that cryptocurrency-related transactions carry an elevated risk of being related to fraud or a scam. But not every cryptocurrency-related payment is linked to fraud or a scam. And there's a balance to be struck, as I've mentioned. So, I think it would be too much to say HSBC ought to have intervened in Mr P's payments other than the second one which was for £3,000. These other four payments ranged from a value of £220 to £1,210, and given their respective amounts and spacing, I would not reasonably expect HSBC to have intervened in them.

However, I understand, as our Investigator explained, that HSBC introduced some limits in August 2023 which meant the payment for £3,000 on 8 November 2023 shouldn't have been sent (as it was greater than the limit of £2,500 for a single payment for cryptocurrency). HSBC has said it didn't know the payment was for cryptocurrency given the payment code presented by the merchant. However, I don't think what our Investigator said about this was unreasonable – that HSBC ought to, regardless, have known this was likely crypto-related (given the merchant) and so the payment shouldn't have been permitted due to HSBC's limits. However, this isn't sufficient reason alone to uphold this complaint. To uphold this complaint, I also need to be persuaded that had HSBC done what I think it should have done, that this would have prevented Mr P's loss. I appreciate Mr P has said this is based on assumptions, but where I can't be sure about something I need to make up my mind based on the balance of probabilities – in other words, based on what I think most likely would have happened given the available evidence and arguments. And here, whilst I acknowledge it's possible that if HSBC had intervened appropriately, that this might have prevented Mr P's loss from this point, I think it's most likely that, actually, it wouldn't have done so.

I say this because it's clear that Mr P was convinced by the 'investment' at this stage, with it having been recommended to him by friends who it appeared to be working well for. Mr P has explained a number of reasons why he thought it was legitimate. And in the circumstances of this case, given all this, I think that even if HSBC had declined the payment and presented Mr P with an appropriate warning about cryptocurrency investment scams, that this likely wouldn't have changed things. I think Mr P would still likely have thought it was legitimate from what he'd already understood about it, and therefore, if this had happened, he likely would have sought to proceed anyway, instead making the £3,000 payment by way of two smaller payments which wouldn't have broken the limit. So, whilst I acknowledge Mr P will be disappointed, I'm satisfied I can't fairly say, therefore, that HSBC unreasonably failed to prevent Mr P's payments, or that it is the likely proximate cause of his loss to the scam.

Recovery

After these debit card payments were made, the only potential avenue for recovery of them would have been via the chargeback scheme. However, Mr P made the debit card payments from his HSBC account to a crypto exchange (and not directly to the scammers). This means the merchant here, for chargeback purposes, would be the crypto exchange (and not the scammers). The crypto exchange would have legitimately provided the services intended. The transfer of the cryptocurrency to the scammers would not give rise to a valid chargeback claim through HSBC. So I don't think these payments were recoverable through HSBC once they had been made.

I also think HSBC's offer to pay Mr P £50 for service issues was fair and reasonable. It was always going to be a distressing period, when Mr P found out he'd been scammed, and I think the root cause of this is the fraudsters themselves. And overall, I think this offer from HSBC was fair.

I'm sorry Mr P was scammed and lost this money. He has my sympathy. However, I can't fairly tell HSBC to reimburse him in circumstances where I'm not persuaded it reasonably ought to have prevented the payments or to have recovered them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 January 2025.

Neil Bridge
Ombudsman