

THE COMPLAINT

Mr D complains that HSBC UK Bank Plc (“HSBC”) will not reimburse him money he says he lost when he fell victim to a scam.

Mr D is represented by CEL Solicitors (“CEL”) in this matter. However, where appropriate, I will refer to Mr D solely in this decision for ease of reading.

WHAT HAPPENED

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview.

Mr D says he has fallen victim to a cryptocurrency related investment scam. Mr D says a scammer deceived him into making payments to what he thought was a legitimate investment with ‘CEF.FD’. The debit card payments in question were all made to Bitget:

- **Payment 1:** £100 on 1 February 2024
- **Payment 2:** £1,600 on 8 February 2024
- **Payment 3:** £4,000 on 12 February 2024

Mr D disputed the above with HSBC. When HSBC refused to reimburse Mr D, he raised a complaint, which he also referred to this Service.

One of our investigators considered the complaint and did not uphold it. CEL, on behalf of Mr D, rejected this. As the investigator’s findings were not accepted, this matter has been passed to me to make a decision.

WHAT I HAVE 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 find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Further, under section 225 of the Financial Services and Markets Act 2000, I am required to resolve complaints quickly and with minimum formality.

Contingent Reimbursement Model (CRM) code

It appears that the funds concerned from Mr D’s HSBC account went to a cryptocurrency

account in his name. And then, as Mr D says, the converted cryptocurrency was sent to the scammer. Because of this, the CRM code does not cover Mr D's payments.

Regulatory framework

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

Should HSBC have recognised that Mr D was at risk of financial harm from fraud?

It is not in dispute that Mr D authorised the payment transactions in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory requirements and good industry practice which suggest banks/firms – such as HSBC – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transactions in this matter.

Payments 1 and 2

I am not persuaded that Payments 1 and 2 were that unusual or out of character. I acknowledge that the transactions were international and cryptocurrency related in nature. However, I have also taken into account the fact that Payment 1 was a low amount; and Payment 2, whilst high in value relative to Mr D's account, it was not a significantly high amount, for example, it was under £3,000. Having weighed up these factors, I would not have expected Payments 1 and 2 to have triggered HSBC's fraud detection systems.

Payment 3

I would have expected this transaction to have flagged on HSBC's systems. I say this given the amount of Payment 3, the spike in value between this transaction and Payment 2, and the fact Payment 3 was international and cryptocurrency in nature.

What kind of intervention should HSBC have provided regarding Payment 3?

Given the above aggravating features, to my mind, there was an identifiable risk. I am mindful of the fact that Payment 3 occurred post the Financial Conduct Authority's Consumer Duty. I have taken this together with the aggravating factors present. In doing so, my view is that a proportionate intervention to the risk identified would have been for HSBC to have provided Mr D with an automated scam warning tailored to the likely cryptocurrency related scam Mr D was at risk from. For example, HSBC should have done this by asking Mr D a series of automated questions designed to narrow down the type of cryptocurrency related scam risk associated with the payment transaction Mr D was making.

HSBC failed to do this.

CEL argues that HSBC should have invoked the Banking Protocol. I do not agree with this. I am not satisfied that there were sufficient aggravating factors surrounding any of the payments concerned to justify HSBC invoking the Banking Protocol.

If HSBC had provided a warning of the type described, would that have prevented Mr

D's losses from Payment 3?

I have explained why it would have been reasonable for Payment 3 to have triggered an intervention from HSBC. So, I must now turn to causation. Put simply, I need to consider whether HSBC's failure to intervene caused Mr D's losses from Payment 3. To do this, I need to reflect on whether such an intervention (described above) would have likely made any difference. Having done so, I am not persuaded that it would have. I take the view that, on the balance of probabilities, Mr D would have frustrated HSBC's attempt to intervene to protect him from financial harm – thereby alleviating any concerns HSBC had.

I have reached this view for the below reasons. In summary:

- I have considered WhatsApp messages exchanged between Mr D and the scammer. Having done so, I am persuaded that Mr D very much trusted the scammer at the time.
- Given the nature of the WhatsApp messages, I am persuaded that Mr D not only trusted the scammer, but had fallen for them romantically.
- I have not seen anything to suggest that Mr D had any concerns about the scam at the time of Payment 3. For example, Mr D did not show any reservations about his funds, profits, withdrawals, etc.
- After Payment 3, Mr D expressed concerns about the scammer pressuring him to make further payments; and concerns about withdrawal fees. However, despite having these concerns, it appears Mr D continued to trust the scammer and did not have his Damascus moment until much later.

Taking all the above points together, I consider that had HSBC provided Mr D with the written warning described above, it is likely he would not have heeded it. That is, he would have disregarded the warning, or spoken to the scammer about it who, in turn, would have likely alleviate any of Mr D's concerns. From what I have seen, Mr D was very much under the spell the scammer had woven at the time. I find it unlikely that an automated written warning from HSBC would have dispelled this.

It follows that I am not satisfied HSBC could have prevented Mr D's losses.

Recovery of funds

I have considered whether HSBC acted appropriately to try to recover Mr D's funds once the fraud was reported.

Card payments (chargeback)

Chargeback is an entirely voluntary scheme, which means firms are under no formal obligation to raise a chargeback claim. The relevant scheme operator can arbitrate on a dispute between a merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the relevant scheme – so there are limited grounds on which a chargeback can succeed.

The service of purchasing cryptocurrency/exchanging funds into cryptocurrency – is not covered under the chargeback scheme concerned in this matter. This is because the exchanges in question provided their services as intended. This also applies to any payment processor involved, as they would have carried out their services as intended when transferring funds.

For these reasons, I find that any chargeback claim in this matter had little chance of success under the relevant chargeback scheme. It follows that I would not have expected HSBC to have raised one on behalf of Mr D.

Conclusion

Taking all the above points together, I do not find that HSBC has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing HSBC to do anything further.

In my judgment, this is a fair and reasonable outcome in the circumstances of this complaint.

MY FINAL DECISION

For the reasons set out above, my final decision is that I do not uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 August 2025.

Tony Massiah
Ombudsman