

## **The complaint**

Mr and Mrs B complain that HSBC UK Bank Plc (“HSBC”) won’t refund money they lost to an investment scam.

Mr and Mrs B are being represented by solicitors in their complaint.

The transactions in dispute were made by Mr B. For ease, I’ve referred solely to him throughout my decision.

## **What happened**

The details of this complaint are well known to both parties and have also been previously set out by the investigator in their view. So, I’ll focus on giving my reasons for my decision.

The complaint concerns eight payments totalling just under £47,000 to a cryptocurrency exchange, which were made using Mr B’s HSBC debit card between May and July 2022. These were made in connection to an investment opportunity offered by a firm “F”, which Mr B says turned out to be a scam. He reported the matter to HSBC soon after the last disputed payment was made.

## **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 agree with the conclusions reached by the investigator for the following reasons:

- Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There’s no dispute that Mr B made the payments using his security credentials, and so they are authorised. But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.
- HSBC has said that it blocked the initial transaction of £1,999.29 and sent Mr B a text message to check that it was him making the payment. It says Mr B confirmed that the payment was genuine. Given the transaction amount in question and bearing in mind that the account statements show a history of transactions to the merchant involved (the cryptocurrency exchange), I’m satisfied that the intervention carried out by HSBC was proportionate to the risk involved. I note that Mr B’s representative doesn’t appear to dispute this either.

- The next transaction, which debited the account ten days later, was for £8,097.92. The investigator thought that the transaction ought to have flagged as suspicious to HSBC given the amount had jumped to nearly four times the previous amount. In my view, it's arguable whether that transaction ought to have flagged as unusual. I say this because just 13 months prior, Mr B had used the same debit card to make a payment to that same merchant for an amount of £11,146.28. Given the previous history of sending an even larger amount to that merchant, and a recent confirmation from Mr B that he was indeed making transactions to the merchant again, I'm not entirely convinced that HSBC ought to have intervened at the time of the second transaction in dispute.
- Even if I were to make a finding that HSBC should have made enquiries before releasing the payment, I'm not persuaded that it would have affected Mr B's decision-making. I've reviewed the messages he exchanged with the scammer and it's evident that the interaction started at least a month before Mr B made the first payment. The messages show that he had built a good relationship with the scammer and, as noted by Mr B's representative, trust had been gained. Had HSBC questioned Mr B, I think it's more likely than not he would have explained that he was sending money to his own crypto wallet with the cryptocurrency exchange. And that he'd done that before several times. When asked about his plans for the cryptocurrency he'd purchased, I've no reason to believe that Mr B wouldn't have been honest with the bank. I think it's likely he would have explained how he found F and that he had researched it prior to investing.
- Had HSBC told him that scammers tend to use social media to promote investment opportunities, I'm not persuaded that Mr B would have stopped in his tracks. I say this because he's told us he reviewed F's website in addition to its social media pages, and it looked genuine and professional. We've also been told that Mr B followed the social media content of the individual his dealings were with, and I understand their channel had over 200,000 subscribers which instilled further confidence in Mr B. Considering how taken in he was by the scammer, who was in regular contact with him and would have been able to provide reassurances, I'm not convinced that further questioning by HSBC would have led to Mr B acting differently.
- Even if Mr B had gone away to do further research, there were no regulator warnings about F or the individual he was dealing with. And, having carried out a backdated search on the internet, I haven't been able to find any adverse information about them either.
- Thinking next about the subsequent transactions which went to the same merchant, I don't consider they would have appeared suspicious given the pattern that had been established by that point. So, I don't think HSBC ought to have challenged the subsequent transactions either.
- I've also thought about whether HSBC could have done more to recover the funds after it became aware of the situation, as in some circumstances the money can be recovered. Mr B's payments went to a cryptocurrency exchange. He wouldn't be able to make a successful chargeback claim in the circumstances because the merchant he paid did provide the service requested (i.e., conversion of fiat money into cryptocurrency). So, I don't think HSBC was under any obligation to raise a chargeback dispute for Mr B. That said, I understand that the bank asked him to provide supporting evidence before considering his claim, but it wasn't forthcoming. Mr B subsequently withdrew his claim to pursue it through his representative.

In summary, I know that Mr B will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which he finds himself, for the reasons given, it wouldn't be fair of me to hold HSBC responsible for his loss.

### **My final decision**

For the reasons given above, 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 B and Mrs B to accept or reject my decision before 15 January 2024.

Gagandeep Singh  
**Ombudsman**