

## The complaint

Mr T complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he lost as the result of a scam.

Mr T is being represented by a third party. To keep things simple, I will refer to Mr T throughout my decision.

## What happened

Mr T was looking on Facebook when he saw an advertisement for a business called Z-Cash (X). After reading the advertisement Mr T was called by X and persuaded to start investing with it. X initially asked Mr T for a copy of identification documents and a relatively small payment of £500 to setup his account.

Mr T was sent information that allowed him to login to his account with X. X soon requested more money from him, but Mr T said he would not send anything further until he was able to make a withdrawal from the investment, which he did.

Mr T allowed X access to his computer via the screensharing application AnyDesk and X guided Mr T through the process of opening a Luno account which X said was necessary for further investments to be made.

Having built trust with Mr T, X persuaded him to make further payments via Luno. Although when Mr T later tried to make a withdrawal from his account with X, he wasn't able to, and he realised he had fallen victim to a scam.

Mr T made the following payments into the scam and received the following refund:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Payment Method</u>
3 February 2021	Bitxtech.com	£503.77	Card
15 February 2021	Luno	£1.00	Bill payment
15 February 2021	Luno	£1,500.00	Bill payment
15 February 2021	Luno	£96.54	Refund
23 February 2021	Luno	£7,000.00	Bill payment
23 February 2021	Luno	£6,000.00	Bill payment
8 March 2021	Luno	£5,000.00	Bill payment

Other than the small refund Mr T received from X he was unable to recover any of the money he paid into the scam.

Our Investigator considered Mr T's complaint and thought it should be upheld in part. HSBC disagreed, so this complaint has been passed to me to decide.

## 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.

It has not been disputed that Mr T has fallen victim to a cruel scam. The evidence provided by both Mr T and HSBC sets out what happened clearly. What is in dispute is whether HSBC should refund the remaining funds Mr T lost due to the scam.

#### *Recovering the payments Mr T made*

Mr T made payments into the scam via his card and bill payment (transfer).

I have considered whether Mr T should receive a refund under the chargeback rules.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, 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.

Mr T was dealing with the scammer, which was the business that instigated the scam. But Mr T didn't make the debit card payment to the scammer directly, he paid a separate cryptocurrency exchange. This is important because HSBC was only able to process chargeback claims against the merchant he paid, not another party.

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mr T's payments into cryptocurrency. Therefore, it provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr T paid and any attempt at a chargeback would likely fail.

I have also considered if Mr T should have received a refund under the Contingent Reimbursement Model (CRM) code. But the CRM code only applies when domestic payments (as the result of a scam) are sent to another person. Here Mr T sent the payments to an account held in his own name and the scam occurred when the purchased crypto was moved from that account to the scammer. I'm satisfied the CRM Code wouldn't apply in this scenario.

So, I don't think HSBC had an opportunity to recover the funds Mr T sent.

#### *Should HSBC have reasonably prevented the payments Mr T made?*

Mr T has accepted he authorised the payments he made to the cryptocurrency exchanges, so the starting point here is that Mr T is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Mr T was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The first three payments Mr T made were not for significant amounts so I wouldn't have expected HSBC's fraud prevention systems to have been triggered. A call did take place

when Mr T made his first payment to Bitxtech but this call was to confirm it was Mr T who was making the payment. Considering the size of the payment I think this type of intervention, at the time was reasonable.

However, on 23 February 2021 Mr T made two larger payments in the same day totalling £13,000. These payments were not in line with the way Mr T usually operated his account. He paid two substantial payments on the same day to the same payee, and that payee was a cryptocurrency exchange.

Considering the amount of these payments I would have expected the first payment of £7,000 to have triggered HSBC's fraud prevention systems and for it to have had a meaningful conversation with Mr T about what the payment was for.

Had HSBC questioned Mr T about the payment I see no reason why Mr T wouldn't have been honest about how the payment had come about and I think it's likely HSBC would have been able to uncover the scam and prevented any further loss to Mr T. So, HSBC is responsible for Mr T's loss from the first payment on 23 February 2021.

*Did Mr T contribute to his loss?*

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

Mr T told us that he had searched online about X before investing and he was able to see many positive online reviews. However, a search online shows negative reviews at the time about X that I think should have prompted Mr T to carry out further checks before proceeding with the investment.

So, in the circumstances I think Mr T should share the blame for his loss and it would be fair for HSBC to reduce the compensation it pays Mr T by 50%.

### **Putting things right**

I've explained why I think, if HSBC UK Bank Plc had done what it reasonably ought to have done, Mr T would not have lost as much to this scam as he did.

HSBC UK Bank Plc should therefore refund the payments Mr T made into the scam from the first payment of £7,000 on 23 February 2021 (less 50%).

HSBC UK Bank Plc should add 8% simple interest per year to the amount it pays Mr T from the time Mr T made the payments to the time HSBC UK Bank Plc provides the refund (less any lawfully deductible tax). If the payments were paid from Mr T's savings account HSBC UK Bank Plc are to apply account interest instead.

### **My final decision**

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 August 2023.

Terry Woodham

**Ombudsman**