

The complaint

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

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

What happened

In summary, Mr V's friend had introduced him to a business called FX Live (X) in early 2021. Mr V's friend said he had a good experience with X and was making profit. Interested in the investment Mr V checked out X's website and trading platform which looked legitimate. Mr V then completed an online form with his contact details.

Mr V was contacted by X and decided to invest with it. Mr V also provided identification documents to X when requested, something he had come to expect from a legitimate business like the one X appeared to be. Mr V also allowed X access to his device by downloading the screen sharing application AnyDesk.

X helped Mr V setup accounts with cryptocurrency exchanges which were used to transfer funds to X. After making some relatively small payments into the investment X persuaded Mr V that he could make more profit by investing larger sums. Mr V then took out a £25,000 loan to fund the investment as directed by X.

In April 2021 Mr V decided he wanted to make a withdrawal from his investment that he could see had now made a profit and pay back the loan he had previously taken. Mr V was told he would have to make a further payment in relation to tax before a withdrawal could be made which Mr V complied with.

Shortly after this Mr V was unable to communicate with X or make any withdrawals from the investment.

In May 2021 Mr V received another call from a business called BOA Crypto (Y). Y explained that it had taken over from X and that there was a remaining balance in his account. The balance on Mr V's account had fallen due to what Y described as being a "crash" and the only way Mr V could regain the money he had lost was by making further investments. Mr V trusted Y and made further payments into the investment as directed by Y for several months. When Mr V attempted to make a withdrawal from his account with Y he was again advised he would have to make a further payment in relation to tax before a withdrawal

could be made. Mr V again complied with this request before all communication ceased with Y and Mr V was unable to make a withdrawal.

It was clear at this stage that Mr V had fallen victim to a scam.

The following payments were made from two accounts in Mr V's name:

Date	Payee	Amount	Payment Method
26 January 2021	Clearbank	£2,000.00	Transfer
26 January 2021	Clearbank	£1,550.00	Transfer
3 March 2021	Binance	£100.00	Transfer
04 March 2021	Jubiter	£23,006.00	Transfer
12 April 2021	Binance	£4,000.00	Debit Card
14 April 2021	Binance	£1,000.00	Debit Card
12 May 2021	Binance	£500.00	Debit Card
12 May 2021	Binance	£500.00	Debit Card
11 June 2021	Binance	£15,000.00	Transfer
24 June 2021	Binance	£9,000.00	Transfer
12 July 2021	Binance	£3,000.00	Transfer
12 July 2021	Refund	-£3,000.00	
12 July 2021	Refund	-£3,000.00	
13 July 2021	Binance	£3,000.00	Transfer
14 July 2021	Binance	£1,500.00	Debit Card
14 July 2021	Binance	£1,500.00	Debit Card
21 July 2021	Refund	-£2,000.00	
21 July 2021	Binance	£3,000.00	Debit Card
26 July 2021	Payward Ltd	£2,000.00	Transfer
25 August 2021	Cryptopay	£10.00	Transfer
27 August 2021	Refund	-£84.78	
27 August 2021	Cryptopay	£1,500.00	Debit Card
2 September 2021	Coindeck	£250.00	Debit Card
13 September 2021	Cryptopay	£1,000.00	Debit Card
14 September 2021	Binance	£185.00	Debit Card
24 September 2021	Cryptopay	£730.00	Debit Card
30 September 2021	Binance	£2,561.00	Debit Card
30 September 2021	Binance	£1,400.00	Debit Card
30 September 2021	Binance	£2,900.00	Debit Card
30 September 2021	Binance	£1,900.00	Debit Card
30 September 2021	Binance	£1,000.00	Debit Card
30 September 2021	Binance	£900.00	Debit Card
8 October 2021	Refund	-£142.68	
4 November 2021	Cryptopay	£1,000.00	Debit Card
21 November 2021	Refund	-£97.95	

In my provisional decision sent in July 2023 I said:

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

Recovering the payments Mr V made

Mr V made payments into the scam using both debit card and the method of transfer. When payments are made by card the only recovery option HSBC has is to request a chargeback.

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 V was dealing with X and Y, which was the business that instigated the scam. But Mr V didn't make the debit card payments to X and Y directly, he paid separate cryptocurrency exchanges. This is important because HSBC was only able to process chargeback claims against the merchants he paid, not another party (such as X and Y).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr V's payments into cryptocurrency. Therefore, they 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 merchants Mr V paid. As the cryptocurrency exchanges provided the requested service to Mr V any chargeback attempt would likely fail.

I have also considered whether Mr V should receive a refund for the payments he made into the scam 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 V sent payments to an account held in his own name. And the scam occurred when his funds were moved from that account to the scammer. So, I'm satisfied the CRM Code wouldn't apply in this scenario.

With the above in mind, I don't think HSBC had any recovery options available to it for the payments Mr V made.

Should HSBC have reasonably prevented the payments Mr V made?

It has been accepted that Mr V authorised the payments that were made from his accounts with HSBC, albeit on X and Y's instruction. So, the starting point here is that Mr V 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 been aware of the scam and stepped in and questioned Mr V about them. And if it had questioned Mr V would it have been able to prevent the scam taking place.

Some of the payments Mr V made into the scam, although made to legitimate businesses, were for significant amounts. The payment on 4 March 2021 was for over £23,000. Considering the size of this payment I would have expected HSBC's fraud prevention systems to have been triggered and for HSBC to have stepped in and had a conversation with Mr V about what the payment was for.

However, I think it's unlikely this scam would have been prevented if HSBC had stepped in at this time. I say this for the following reasons.

A call took place on 25 January 2021 before Mr V made any successful payments into the scam. HSBC called Mr V and the HSBC representative confirmed she was calling to verify some activity on his account.

The HSBC representative wanted to confirm a payment of £2,000 to Clearbank. She explained the payment had been flagged for fraud checks and asked what the payment was in relation to. Mr V told HSBC that the payment was for investing in Bitcoin and that a friend had recommended a broker to him, he said that he had contacted the business about the investment. The HSBC representative explained the account Mr V was trying to send money to had previously been reported to it as fraud or a scam.

Mr V accepted he had not done any research on the business before attempting the payment and asked the HSBC representative what she would do in the circumstances. She said she would reverse the payment and do further research on the business to make sure it was legitimate before proceeding to make further payments. Mr V agreed.

I think it was clear from this call that the account details given to Mr V for the investment were linked to fraud or scams and that HSBC were not happy with the payment. Yet the following day Mr V made further payments as directed by X and continued to make payments for several months. I don't think any further intervention by HSBC would have resulted in Mr V not making the payments as he had been warned about the scam, and he chose to continue making payments. I don't think giving Mr V the same advice again would have changed his decision.

In addition to this, when Mr V took out the loan (assisted by X and Y using AnyDesk) he gave the reason for the loan as home improvement and debt consolidation, but Mr V has accepted this was not the reason and he always intended to invest the funds into the scam. I think this shows Mr V's conviction to make the investment. He was being coached by X and Y on what to say to the bank to receive the loan offer and was willing to be dishonest to fund the investment.

When Mr V reported the scam, after all the payments had been made, he told HSBC that he did not recognise Binance as a payee and that someone else had made the payments from his account. Mr V told HSBC he had previously been called by someone impersonating a representative of HSBC.

When we asked Mr V why he said this to HSBC he told us he had received the bogus call and was confused about who Binance were. He also told us that he didn't know at the time of the call who Binance were.

By the time Mr V reported the scam to HSBC he had already made payments to Binance with help from X and Y for a total of over £50,000 across 19 payments and had been making the payments over seven months with no complaint. I think it's very unlikely that Mr V didn't know who Binance was and find it surprising that Mr V didn't mention the scam investment during this call.

I think the content of the above call shows Mr V was willing to be dishonest with HSBC about the actual circumstances of the scam to recover the funds that he had lost.

In addition to what I've explained above, at one point Mr V lost all access to his account with X that held a substantial balance. When he was later called by Y he was told his balance had fallen drastically and he had to reinvest further funds Mr V did no further research into either company before agreeing to make yet further payments.

I think it's clear that Mr V trusted the recommendation of his friend to trade with X and trusted X and Y themselves over HSBC. Despite being warned about the risk of sending payments into the scam from the outset, Mr V continued to make payments as directed by the scammer without carrying out any research and even gave false information when applying for a loan and when he reported the scam to HSBC.

In summary, I think Mr V had complete trust in the scam that was presented to him, and I don't think any further intervention from HSBC would have stopped Mr V making payments into it. So, HSBC is not responsible for Mr V's loss.'

I gave both Mr V and HSBC time to respond to my provisional decision. Mr V provided a response. HSBC didn't provide anything for me to consider.

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.

In response to my provisional decision Mr V said that the methods used in the scam he fell for are well known by the banks as being very persuasive and it is not uncommon that customers are taken in by the scammers on the belief that the investments they are presenting are genuine.

Mr V also explained that although HSBC did intervene, he doesn't think it did enough to prevent the scam and warn him of it. Mr V has listed other questions that he feels would have been suitable during the call he had.

I have thought about what Mr V has said. I agree that the scam Mr V fell for was sophisticated and that these types of scams are successful because the scammers are very technical and persuasive. However, as I said in my provisional decision, I think HSBC did enough to warn Mr V that the payments he was making were potentially scam related.

HSBC stopped a payment Mr V was making and told him the account he was sending funds to had previously been reported as a scam. I think this is very clear. HSBC also said Mr V shouldn't make any further payments before making sure the company was legitimate. Yet despite this clear warning Mr V made further payments into the scam.

In addition to this Mr V took out a loan to fund the payments he was making and gave incorrect reasons for taking the loan, and when Mr V reported the scam to HSBC he told HSBC he did not recognise the payee Binance, despite making 19 payments to the business. I think this shows Mr V was willing to be dishonest to proceed with the investment.

For the above reasons and those covered in my provisional decision Mr V's further points don't change my decision. I don't think any further intervention from HSBC would have stopped Mr V making payments into the scam. So, HSBC is not responsible for Mr V's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 31 August 2023.

Terry Woodham
Ombudsman