

## **The complaint**

Mr R complains that HSBC UK Bank Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr R met a woman on a dating website and started a relationship with her, communicating mainly via WhatsApp. The woman told Mr R she worked in finance and had made money from investing in cryptocurrency, offering to teach and support him to invest. She promised returns of up to £20,000, which he believed because he trusted the woman.

She told him to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet. Between 12 April 2023 and 4 May 2023, he made thirteen payments to a cryptocurrency exchange company totalling £13,208.34, using a visa debit card connected to his HSBC account.

Mr R realised he'd been the victim of a scam when he was asked for more money to release his funds, and lost contact with the woman. He contacted HSBC because he felt it had failed to protect him from the scam, arguing it should have contacted him and queried the transactions.

But HSBC refused to refund the money he'd lost. It said it was unable to raise a chargeback request because it didn't hold chargeback rights for third party merchants under Visa's chargeback rules. It also said there was no reason for it to offer a refund as the payments were to an account in Mr R's name.

Mr R wasn't satisfied and so he complained to this service, arguing HSBC should have queried the transactions. But our investigator didn't think the complaint should be upheld because he didn't think the payments were unusual or suspicious. He said Mr R had made a payment of £83.83 on 12 April 2023, followed by payments of £713.58 and £17.74 on 15 April 2023, and these initial transactions wouldn't have raised concerns as they were low value and in line with the normal spending on the account.

He accepted the amounts increased over time and that Mr R hadn't made any payments of similar value in the year before the scam, but he didn't think the disputed payments were so unusual or suspicious that HSBC ought to have intervened.

He also said there were no warnings about the cryptocurrency exchange company Mr R had paid and he didn't speak to or interact with HSBC staff at the time of the payments, so it didn't miss an opportunity to identify the payments were being made in relation to a scam.

Mr R has asked for his complaint to be reviewed by an Ombudsman. He's said his mental health has suffered because of the scam and that he wouldn't have gone ahead with the payments if HSBC had contacted him.

## **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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr R has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

I'm satisfied Mr R 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr R is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Mr R didn't intend his money to go to scammers, he did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I've also thought about whether HSBC could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr R when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Mr R from financial harm due to fraud.

The payments didn't flag as suspicious on HSBC's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr R normally ran his account, and I don't think they were. All the payments were to a legitimate cryptocurrency exchange company and as our investigator has pointed out, the first three payments were low value and weren't unusual when compared with the normal spending on Mr R's account. On 20 April 2023, Mr R made two payments which totalled £2,679.39, which was high for the account, but the sum wasn't enough to raise concerns in circumstances where Mr R was paying a legitimate cryptocurrency exchange that he'd paid on four previous occasions. So, I don't think HSBC missed an opportunity to intervene.

### *Chargeback*

I've thought about whether HSBC could have done more to recover Mr R's payments when he reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr R).

Mr R's own testimony supports that he used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchange would have been able to evidence they'd done what was asked of them. That is, in exchange for Mr R's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that HSBC's decision not to raise a chargeback request was fair.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Mr R has lost money and the effect this has had on him. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

For the reasons I've outlined 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 R to accept or reject my decision before 23 October 2023.

Carolyn Bonnell  
**Ombudsman**