

The complaint

Ms B complains about HSBC UK Bank Plc.

She says that HSBC didn't do enough to protect her from becoming the victim of a scam and wants it to refund the money she has lost

What happened

In June 2021, Ms B was looking online for investment opportunities in Amazon shares. She entered her details into a website that she found through Google and was then contacted by phone by an individual from a company called 'cryptotrader'.

This individual persuaded Ms B to 'invest' in cryptocurrency rather than the Amazon shares she was originally interested in purchasing.

Ms B originally began sending money via another bank – 'B' but was then persuaded to transfer the money via HSBC instead.

Ms B was then pressured to pay more money in order to 'upgrade' to VIP status. However, suddenly her supposed profits and initial investment 'crashed' on the online portal she had been given access to by 'cryptotrader'. It told her that she needed to top up her account in order to save her money.

It told her she needed to invest a further £14,000 in order to secure the money she had already paid – but Ms B did not have these funds. Reluctantly, she paid two more payments of almost £10,000. Cryptotrader then sent her back £3 and £4997, before pressuring her to pay even more money.

When Ms B refused to do this, cryptotrader cut communication with Ms B, and she realised she had been the victim of a scam.

She complained to HSBC, but it didn't uphold her complaint.

Ms B then brought her complaint to this Service.

Our Investigator looked into things but didn't think that the complaint should be upheld. Ms B remained unhappy, so the complaint was passed to me to make a decision.

I've previously issued a provisional decision on this complaint explaining that I planned to uphold the complaint in part.

Both parties agreed to my provisional decision, HSBC as a gesture of goodwill, so now I will formalise it in this final decision.

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 decided to partially uphold Ms B's complaint. I'll explain why.

Was Ms B the victim of a scam?

I don't think that it is in dispute here that Ms B was the victim of a scam. She was persuaded to invest in cryptocurrency rather than the Amazon shares she originally wanted to purchase and was manipulated into paying more money to reach certain 'levels'. The scammer also paid Ms B money when she asked questions of it – no doubt to entice Ms B into paying more and convince her of its legitimacy. When Ms B would no longer part with any more money, the scammer cut communication with her.

Ms B made the following payments from her HSBC account to the scam. I have also included the payments the scammers made to Ms B.

Date	Payee	Payment type	Amount
9 July 2021	N	Debit Card	£4,513.38
14 July 2021	S	Debit Card	£4,997
14 July 2021	S	Debit Card	£4,998
19 July 2021	S	Debit Card	£4,998
22 July 2021	S	Debit Card	£4,997
22 July 2021	S	Debit Card	£4,998
9 August 2021	N/A	CREDIT	+£3
9 August 2021	N/A	CREDIT	+£4997
		Net loss	£24,501.38

Did Ms B authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Ms B isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe.

I don't think it's in dispute that Ms B authorised the payments in question here - they were made using her own debit card while she still thought she was paying money to a legitimate source

I understand Ms B had been tricked into instructing HSBC to make the payments – but while Ms B never intended the payments to go to the scammers, this doesn't change the fact she authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of Ms B's payments

After Ms B made the payments, I wouldn't expect HSBC to do anything further until it was

notified of the scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, HSBC) and the merchant (here, N and S).

However, a chargeback in these circumstances would unlikely have been successful. This is because N and S are legitimate crypto exchanges and provided the services that Ms B had requested of it – the purchase of crypto and subsequently moving that crypto onto a wallet of Ms B's choosing. What happened after that crypto was successfully moved is therefore a separate matter – and so a successful chargeback would likely never have been possible – and so, I don't think that these payments were recoverable once they had been made.

Should HSBC have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that HSBC reasonably ought to have prevented some or all payments Ms B made in the first place – therefore preventing the loss before it happened.

Ms B authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, HSBC should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Been monitoring accounts – including payments made and received – to counter various risks including anti-money laundering, countering the financing of terrorism and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

This leads me to consider the payments that Ms B made – and if HSBC should have intervened.

The first two payments

Having considered the first two payments Ms B made, I'm not persuaded that HSBC should have intervened at this point. Ms B was not using her account that much prior to the payments taking place – but the amounts paid weren't altogether sufficiently unusual amounts for a customer to be paying through a current account – they were also five days apart.

Payment three

Payment three was the second payment made on the same day – taking Ms B's daily spend to almost £10,000 – and it was the third payment in five days to a seller of crypto. While not all payments made to crypto are as a result of a scam, I do think that the daily spend coupled with where the payment was going to should have prompted HSBC into action especially given that by January 2019, HSBC should already have had a good understanding about how scams like the one Ms B fell victim to work.

HSBC should have got in touch with Ms B to establish if this payment posed a possibility of placing her in financial harm before continuing with the payment. I would've expected it to have questioned Ms B about the payment – including what she was making the payment for and surrounding context and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

Ms B had been contacted by another business previously while making earlier payments – and she was questioned about what she was doing and why. I've listened to the conversation that the other business had with Ms B, as this Service has been provided with the call for another complaint that she has brought.

Having done so, I think that there were things that this business could have done much better than it did – and Ms B asked questions of it which the business didn't fully answer. So, I'm unable to say Ms B was given a meaningful warning elsewhere but continued to make payments, and that an intervention from HSBC wouldn't have had any further effect on what Ms B did.

HSBC should have contacted Ms B itself to complete its own investigation into what was happening – and so it missed an opportunity to prevent the loss from this point.

Should Ms B bear some responsibility for the loss?

While I do consider that HSBC should have prevented the payments from payment three, I do need to consider if Ms B should bear some responsibility for what happened here by way of contributory negligence. Ms M is already bearing some responsibility for the loss as I am not recommending that HSBC repay the first two payments.

But I don't think that Ms B should bear responsibility for payments three onward. Ms B was not a sophisticated investor – so she was not the expert here. The scammers asked Ms B to provide identification documents and fabricated professional looking 'online-portals' with which she could apparently see her real time balance. The scammers also allowed Ms B to make several withdrawals to prove their legitimacy. HSBC was the expert here and would've known more of the intricacies of how scams like this work.

Putting things right

HSBC should pay Ms B the total of the last four payments – minus the payments that were returned to Ms B by the scammer.

I calculate this to be £14,991.

On top of this HSBC should also pay Ms B 8% simple interest on this amount, from the date of the payments to the date payment is made to Ms B (less any lawfully deductible tax).

My final decision

I uphold this complaint in part. HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 July 2023.

Claire Pugh
Ombudsman