

The complaint

Mr C complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he lost as the result of two scams.

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

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr C started a conversation with what he thought to be a genuine person (X) over a well-known dating application. As the conversation developed the two exchanged information and started to communicate over a well-known messaging application.

Mr C and X had lengthy message exchanges about their future, and it was clear that X had built confidence with Mr C. The conversations moved to that of investment opportunity and before long X was explaining how she was making successful investments, and that Mr C could also benefit if he was to invest.

X enticed Mr C into making investments with the scam company GLO Finance, via cryptocurrency exchanges, stating the profit he made would help towards their future together. Mr C started by investing his own personal money but as time went by agreed to take loans to fund the investments.

Mr C took two separate loans with HSBC. One for £15,930 and another for £12,000.

When Mr C tried to withdraw funds from the investment, he was unable to and realised he had fallen victim to a scam.

Having lost money to the scam Mr C searched online for help recovering the lost funds. He found the company MKNDY Ltd (Y) and contacted it for help.

Y explained that it could help Mr C recover his lost funds, but he would first need to open an account with it and invest. Mr C agreed and took out a further £4,000 loan with a separate loan company to finance this investment.

Having made payments to Y as requested it appeared Mr C's funds had been recovered. Although when he tried to withdraw them, he was unable to and was told he would have to make a further payment. It was at this point Mr C realised he had fallen victim to a second scam.

Mr C made the following payments to the scams via his HSBC debit card:

Scam 1 (GLO Finance)

Date	Merchant	Amount
5 January 2022	Coinbase	£830
5 January 2022	Binance	£920
5 January 2022	Binance	£5,000
14 January 2022	Binance	£5,000
14 January 2022	Binance	£5,000
17 January 2022	Binance	£1,700
18 January 2022	Binance	£5,000
18 January 2022	Binance	£5,000
18 January 2022	Binance	£2,000

Scan 2 (MKNDY Ltd)

Date	Merchant	Amount
20 January 2022	Binance	£3,850
28 January 2022	Crypto.com	£75.28

Our Investigator considered Mr C's complaint but didn't think it should be upheld. Mr C 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 C has fallen victim to cruel scams. The evidence provided by both Mr C and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mr C lost due to the scams.

Recovering the payments Mr C made

Mr C made payments into the scam using his debit card via several cryptocurrency exchanges. When a payment is made by debit card the only option available to HSBC to recover the funds 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 C was dealing with the scammers, which were the people that instigated the scams. But Mr C didn't make the debit card payments to the scammers 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.

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr C'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 scammers – doesn't give rise to a valid chargeback claim against the merchants Mr C paid. As they provided the requested service to Mr C any chargeback attempt would likely fail.

I have also considered whether Mr C should receive a refund for the payments he made into the scam under the Contingent Reimbursement Model (CRM) Code. But the CRM code doesn't cover payments made by debit card so it would not apply.

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

Should HSBC have reasonably prevented the payments Mr C made?

It has been accepted that Mr C authorised the payments that were made from his account with HSBC, albeit on X and Y's instructions. So, the starting point here is that Mr C 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 C about the payments he was making. And if it had questioned Mr C, would it have been able to prevent the scams taking place.

The first two payments Mr C made were of relatively low values that I wouldn't have expected to trigger HSBC's fraud prevention systems. Although Mr C went on to make a larger payment of £5,000 on the 5 January 2022 and two further payments of £5,000 on 14 January. I think these payments should have triggered HSBC's fraud prevention systems prompting it to step in and question what the payments were for.

However, I don't think any amount of intervention from HSBC would have prevented Mr C from making the payments. It's clear from the messages Mr C has shared with us that he trusted X and was looking to build a future with her. He also funded this investment by taking out personal loans. He was coached by X on what to say on the loan applications so they would be accepted and was willing to be dishonest with HSBC.

I think in all likelihood Mr C would have been willing to be dishonest with HSBC about the purpose of the payments he was making which would have likely made it difficult for HSBC to uncover the scam that was taking place.

By the time the second scam took place and payments were being made to Binance, Mr C had been making regular payments to cryptocurrency exchanges with no complaint, building a pattern of behaviour on his account. Also, the amounts of the payments Mr C made under the second scam were of a lower value that I would not have expected to trigger HSBC's fraud prevention systems prompting it to step in.

Mr C has argued that further in person conversations with HSBC could have prevented the scam. But for the reasons already explained above I don't think this would have made any difference.

So, while I think HSBC could have done more, I don't think it missed an opportunity to stop the scam and I don't think it is responsible for Mr C's loss. So, HSBC does not have to refund any of the money Mr C lost because of these scams.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 January 2024.

Terry Woodham
Ombudsman