

The complaint

Mr L complains that HSBC UK Bank Plc did not refund a series of payments he lost to a scam.

What happened

Mr L found a trading company in an online search that I'll call 'X' for the purposes of this decision. An advisor from X contacted him and explained how to set up a trading account. They also asked Mr L to download AnyDesk so they could help facilitate the trades.

Mr L transferred £3,750 from his HSBC account in three transactions over a period of four days, between 19 and 23 December 2021. Over time, he saw on his trading platform that he had made returns on his investment and eventually he tried to withdraw these. However, he was told he needed to pay taxes in order to release them. He paid some money but was given excuses as to why he had to pay more. At that point, he realised he had been the victim of a scam.

After some time, Mr L raised a scam claim with HSBC. HSBC contacted the beneficiary bank the same day to try and recover the funds. However, as Mr L had forwarded the funds to another account in his name before sending them to the scammer's wallet, they were unable to recover anything. They also said that the payments did not flag on their fraud detection systems prior to them being processed, so they didn't agree a refund was due.

Mr L referred the complaint to our service and our Investigator looked into it. They felt that the payments were not so unusual that HSBC should have flagged them, so they didn't think HSBC had missed an opportunity to reveal the scam. And they did not think a refund was due in the circumstances. Mr L's representative did not agree with the outcome, they said the payments were higher than Mr L's usual spending so they should have been seen as unusual.

As an informal agreement could not be reached, the complaint has been passed to me for a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr L authorised the payments in question, as he believed they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that HSBC was obliged to follow Mr L's instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether HSBC did enough to try to keep Mr L's account safe.

I've reviewed Mr L's statements and taken the comments of his representatives on board, including the fact these payments were for cryptocurrency which generally carries a higher risk. Having done so, I just don't think the payments in question were of such a high value or so out of line with his normal account activity that they should have been flagged before being processed. There were other payments of similar or higher value in the months prior to the scam, and the individual payments themselves were not high value in the wider banking context. So, I don't think these payments should reasonably have been flagged by HSBC, and I don't think they missed an opportunity to reveal the scam.

As the funds went into an account under Mr L's control, before being forwarded on to the scammer, it was not possible for HSBC to recover the funds once they became aware of the scam. So, I don't think they made an error in relation to the recovery of the funds.

As I don't think HSBC missed an opportunity to reveal the scam and they did not make an error in recovering the funds, I don't think they need to refund Mr L with the money he lost to the scam.

My final decision

I do not uphold Mr L's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 June 2024.

Rebecca Norris

Ombudsman