

## The complaint

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

## 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 N was contacted by a business called CashFX (X). X explained an investment opportunity to Mr N and interested in the opportunity Mr N decided to invest. Mr N made an initial payment into the scam on 21 August 2021, and after being encouraged to invest more, made further payments on 5 September 2021.

Mr N made the following payments to X via legitimate cryptocurrency exchanges:

<u>Date</u>	<u>Payee</u>	<u>Payment Type</u>	<u>Amount</u>
21 August 2021	Coinbase	Debit Card	£1,500
5 September 2021	CRO	Debit Card	£731.89
5 September 2021	CRO	Debit Card	£778.67
5 September 2021	CRO	Debit Card	£1,096.52
5 September 2021	CRO	Debit Card	£997.69

Mr N attempted to make a withdrawal from the investment but did not receive any funds and realised he had fallen victim to a scam.

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

### *Recovering the payments Mr N made*

Mr N made payments into the scam via his debit card. 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 N was dealing with X, which was the business that instigated the scam. But Mr N didn't make the debit card payments to X directly, he paid separate cryptocurrency exchanges. This is important because HSBC would only have been able to process chargeback claims against the merchant he paid, not another party (such as X).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr N'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 N paid.

In any event Mr N had also brought his complaint to HSBC outside of the time limits allowed to request a chargeback.

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

*Should HSBC have reasonably prevented the payments Mr N made?*

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

The first payment Mr N made on 21 August 2021 was for a relatively low amount to a legitimate business. While I appreciate this was to a new payee it would not be reasonable for me to suggest HSBC should step in every time one of its customers makes a relatively low value payment to a genuine merchant for the first time. So, I don't think it's unreasonable that HSBC's fraud prevention systems were not triggered by this payment and that it didn't step into question Mr N about it.

The remaining payments were also for relatively low values so I wouldn't have expected the values to trigger HSBC's fraud prevention systems either. However, by the time Mr N made the payment of £1,096.52 on 5 September 2021, he was making a third payment on the same day to the same merchant. I think this payment should have been seen as unusual enough to have triggered HSBC's fraud prevention systems prompting it to step in.

But even if HSBC had stepped in at the time this payment was made, I think it's unlikely to have made a difference. There was little information available at the time that would have identified X to be a scam and it appeared to be a legitimate business that continued to trade for several years after Mr N made his investment.

As I don't think an intervention from HSBC would have uncovered the scam, I am unable to say it missed an opportunity to prevent the scam taking place, and it is not responsible for Mr N'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 N to accept or reject my decision before 9 February 2024.

Terry Woodham  
**Ombudsman**