

The complaint

Mrs A complains that HSBC UK Bank Plc (HSBC) has refused to refund the money she has lost following her falling victim to 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, Mrs A was called randomly by a business called Magnasale (X) claiming to be able to help recover money she lost trading previously. Mrs A explained she didn't have any money and she wasn't interested. Mrs A was then passed to someone claiming to be a manager who offered to credit her account with \$500 to get her started.

X instructed Mrs A to download the screensharing application AnyDesk and opened a trading account for her. X gained Mrs A's trust over a short period of time and persuaded her to make payments into the investment to receive higher returns.

Mrs A was presented with a professional trading website that appeared legitimate.

Mrs A has explained that although she had limited funds, she was persuaded to also take money from her children's savings.

After Mrs A had made several payments as directed by X, she was no longer able to contact X and was unable to make a withdrawal.

Mrs A made the following payments into the scam:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Payment Method</u>
9 September 2021	Coinbase	£10	Debit Card
9 September 2021	Coindeck	£500	Debit Card
29 September 2021	Coinbase	£1,000	Debit Card
8 October 2021	Coinbase	£1,000	Debit Card

Unfortunately, Mrs A has been unable to recover any of the funds she sent into the scam.

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

Recovering the payments Mrs A made

Mrs A made payments into the scam via her debit card. HSBC was unable to process a chargeback for the payments Mrs A made in relation to this scam.

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.

Mrs A was dealing with X, the person that instigated the scam. But Mrs A didn't make the debit card payments to the scammer directly, she paid separate cryptocurrency exchanges. HSBC was only able to request chargebacks from the merchant Mrs A paid not X.

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mrs A's payments into cryptocurrency. Therefore, this service was provided.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mrs A paid, and any chargeback attempt would likely fail.

I have considered if Mrs A should have received a refund under the Contingent Reimbursement Model (CRM) code. But the CRM code does not apply to payments made by card. So, I'm satisfied the CRM code wouldn't apply in this scenario.

Should HSBC have reasonably prevented the payments Mrs A made?

Mrs A has accepted she authorised the payments that were made from her account with HSBC, albeit on X's instruction. So, the starting point here is that Mrs A 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 payments Mrs A made in relation to the scam were to new payees she had not previously paid, but it wouldn't be reasonable for me to suggest HSBC should step in every time one of its customers makes a payment to a new business. The value of the payments were also not so significant. So, I wouldn't have expected HSBC's fraud prevention systems to have been triggered for these reasons.

As I wouldn't have expected HSBC's fraud prevention systems to have been triggered by the payments Mrs A made, I don't think it missed an opportunity to prevent the scam and it is therefore not responsible for her loss.

HSBC has told us that Mrs A would have been presented with a one-time code when she processed one of the payments she made, and it has provided evidence of this. Mrs A has told us this did not happen. But either way this doesn't change my decision.

Mrs A was aware of the payments as she was making them herself, so whether she had to present a one-time code or not for the payment to proceed has no relevance as Mrs A was willing to make the payments as directed by X, and the code process was only in place to confirm that it was Mrs A making the payments which it was.

My final decision

I don't uphold this complaint.

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

Terry Woodham
Ombudsman