

## **The complaint**

Mr and Mrs P complain that HSBC UK Bank Plc have unfairly refused to refund over £80,000 they lost as part of an investment scam.

Mr and Mrs P have a representative, but for the sake of readability, I will just refer to Mr and Mrs P.

## **What happened**

The details of this complaint are well known to both parties, so I will not repeat everything again here. In summary, Mr and Mrs P were approached by a scam 'investment broker' after clicking on an advert. This broker, who I will call B, convinced them to purchase crypto currency on a number of crypto exchanges via transfer and debit card payment. The crypto currency was then forwarded on to B. Mr and Mrs P made over 25 payments totalling over £80,000.

When Mr and Mrs P tried to withdraw their "profits" they were told to pay additional fees. After some back and forth they realised that they had been scammed.

They raised a complaint with HSBC and requested that they be refunded the transactions. HSBC declined their request.

Our investigator upheld the complaint. They thought that HSBC should have done more on 8 March 2022 as, at this point, there was a conversation between Mr P and HSBC. As the previous payments were out of character, she thought that questions should have been asked about the transactions that had just been made. She felt that an intervention should have occurred before the third payment was made on that date and had HSBC done so, the scam would have likely been prevented from that point. She therefore thought that HSBC should refund the transactions from 8 March 2022 onwards.

HSBC did not agree with this, but did make an offer of 50% of what the investigator had recommended. As Mr and Mrs P did not accept this offer, the matter has been escalated to me to determine.

## **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 agree with the conclusions reached by the investigator. Let me explain why.

It isn't in dispute that Mr and Mrs P authorised the disputed payments they made to the crypto-exchange platforms. It is my understanding that once they purchased crypto, the funds were subsequently transferred to B which was actually another separate crypto wallet, of which I understand the scammers had access to. And it was from that crypto wallet that the scammers extracted the money from (in the form of a crypto currency).

So the payments were requested by Mr and Mrs P - to purchase crypto - using their legitimate security credentials provided by HSBC.

The starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed. However, I've considered whether HSBC should have done more to prevent Mr and Mrs P from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It is arguable that HSBC should have intervened before the conversation on 8 March 2022. But when Mr P did call HSBC on 8 March 2022, it was a missed opportunity to discuss the transactions that had occurred on the account. By this point there had been over £10,000 sent to a new international payee over a relatively short period of time. This included three payments in the same day to a crypto exchange, shortly before the phone conversation. I think, taken together, this was out of character for Mr and Mrs P's account.

So there were several indications that they were being scammed, which HSBC ought reasonably to have been aware of.

Had HSBC asked Mr P further questions during this phone call and for more of the basic surrounding context, I think it's likely he would have explained what he was doing and that he was making an investment after being approached by a 'broker', where he was being told to send money to the broker via crypto-exchange platforms. He would have likely told them that the broker was making "trades" on his behalf. So HSBC should have recognised these circumstances of being indicative of a scam and have acted to provide Mr P with a warning.

Overall, I'm satisfied that a warning to Mr and Mrs P from their trusted bank would have alerted them to the common issues arising in relation to cryptocurrency scams, which in turn would have revealed the truth behind the supposed broker's representations. This would have probably stopped Mr and Mrs P in their tracks. So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mr and Mrs P probably wouldn't have continued to make the payments.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this case, there were no credible warnings online at the time they started their investment. I can't see that they were promised unrealistic returns and the communication between Mr P and the scammer were professional and sounded plausible. So overall I don't think that they could have been aware that what they were seeing on B was a simulation and that they were being scammed. So overall in this specific case I don't think that a deduction in compensation is merited.

I've also thought about whether HSBC could have done more to recover the funds after Mr and Mrs P reported the fraud. In some circumstances the money can be recovered. However, in these circumstances, I don't think there was any way for HSBC to have recovered the funds, especially as once the funds were transferred into a crypto currency, they were then sent on to another crypto wallet.

### **Putting things right**

For the reasons given above, I uphold this complaint in part and direct HSBC Bank UK PLC to:

- Refund Mr and Mrs P the transactions from 8 March 2022; and

- Pay 8% simple interest per year on these payments, from the date they paid them to the date of settlement, less any deductible tax.

**My final decision**

My final decision is I uphold this complaint in part and direct HSBC UK Bank Plc to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 16 February 2024.

Charlie Newton  
**Ombudsman**