

## The complaint

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

Mr S is being represented by a third party. To keep things simple, I will refer to Mr S 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 S was looking online for an investment opportunity, and he came across a business called Bitcoin Trade (X). The business appeared to specialise in cryptocurrency investment and looked very professional. Mr S became interested in the potential opportunity and completed an online data capture form.

Mr S then received a call from X who convinced him the investment was genuine and that X would be investing on Mr S's behalf. Mr S setup an account with X, he was able to login to the platform and appeared to have control over his new trading account.

Mr S started to invest as advised by X and a profit showed on his account. He was then told he would need to make further payments, or risk losing his funds. Mr S made the payments out of fear he would lose his investment, but he still lost most of his funds anyway as margins had fallen below 20% prompting trades to close automatically.

Mr S decided to close his account as the investment had been unsuccessful. But X contacted him again, it said he had been allocated a new account manager and if Mr S invested further (in crude oil, natural gas etc), his account could be saved, he could recoup his losses and make a profit.

Mr S carried out his own research and found that what X had told him was plausible. Mr S started making payments again on X's request.

Several months later Mr S was contacted again by X. His account manager had changed yet again but he decided not to invest more straight away. After a couple of months Mr S could see his investment was growing and decided to invest further.

Mr S then tried to withdraw his investment but was told he would have to make further payments in relation to taxes and blockchain fees. Mr S made the requested payments but still didn't receive the withdrawal he had requested. After researching online, Mr S realised he had fallen victim to a scam.

Below are the payments Mr S made into the scam via legitimate cryptocurrency exchanges from his HSBC account:

Date	Payee	Payment Method	Amount
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3 June 2021	Boulderseomarketin	Debit Card	£70.70
3 June 2021	Transaction fee	Debit Card	£1.94
28 June 2021	Convertency.eu	Debit Card	£305.00
16 July 2021	Convertency.eu	Debit Card	£305.00
4 August 2021	Forris Dax MT	Transfer	£3,000.00
6 August 2021	Forris Dax MT	Transfer	£1,500.00
9 August 2021	Forris Dax MT	Transfer	£1,200.00
13 August 2021	Forris Dax MT	Transfer	£1,000.00
21 September 2021	Cro	Debit Card	£307.53
11 October 2021	Cro	Debit Card	£1,882.53
14 October 2021	Cro	Debit Card	£1,148.01
21 October 2021	Cro	Debit Card	£1,243.05
25 October 2021	Cro	Debit Card	£1,548.88
25 October 2021	Cro	Debit Card	£1,540.37
3 November 2021	Cro	Debit Card	£3,783.16
19 November 2021	Cro	Debit Card	£3,148.92
24 November 2021	Cro	Debit Card	£5,239.77
2 December 2021	Cro	Debit Card	£1,556.60
3 December 2021	Cro	Debit Card	£6,065.86
10 December 2021	Cro	Debit Card	£4,673.51
20 December 2021	Cro	Debit Card	£4,266.79
23 December 2021	Cro	Debit Card	£6,295.14
11 February 2022	Cro	Debit Card	£4,346.92
14 February 2022	Cro	Debit Card	£4,805.59
8 June 2022	Forris Dax MT	Transfer	£100.00
8 June 2022	Forris Dax MT	Transfer	£1,000.00
8 June 2022	Forris Dax MT	Transfer	£2,500.00
9 June 2022	Forris Dax MT	Transfer	£2,400.00
13 June 2022	Forris Dax MT	Transfer	£2,100.00
13 June 2022	Forris Dax MT	Transfer	£5,000.00
17 June 2022	Crypto.com	Debit Card	£5,326.58
20 June 2022	Cro	Debit Card	£1,629.90

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

#### *Recovering the payments Mr S made*

Mr S made payments into the scam via his debit card and the method of transfer. 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 S was dealing with X, which was the business that instigated the scam. But Mr S 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 would have been to convert or facilitate conversion of Mr S's payments into cryptocurrency. Therefore, the cryptocurrency exchanges 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 S paid.

When payments are made via the method of transfer the only option available to HSBC to recover the payment is to contact the payee and ask for a refund if funds remain in that account. As Mr S was sending funds to his own account that were then moved to X I think it's unlikely this would have been an option for the payments Mr S made.

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

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

The first 16 payments Mr S made into the scam were individually for relatively low values to legitimate businesses and spread over five months. I don't think it was unreasonable that these payments didn't trigger HSBC's fraud prevention systems prompting it to question Mr S about the payments he was making.

Mr S has argued that the 16th payment he made into the scam on 24 November 2021 for the higher value of £5,239.77 should have triggered HSBC's fraud prevention systems, and that HSBC should have stepped in at this stage. But by this time Mr S had already made 8 other payments to the same payee over a two-month period without any complaints, establishing the payee as a regular payee he trusted. So, I don't think it was unreasonable that this and future payments to the same payee didn't trigger HSBC's fraud prevention systems.

HSBC did stop a payment Mr S attempted to make to "Foris Dax MT" for the value of £6,114.91 on 8 June 2022. Mr S hadn't made a payment to this business for around 10 months, and the value of the payment was much higher than any payment he had previously made to this business, so I am not surprised this payment was stopped by HSBC.

Despite stopping this payment HSBC allowed four more payments to be sent to the same payee before it spoke to Mr S on 11 June 2022.

HSBC has provided a copy of the call that took place between Mr S and HSBC on 11 June

2022. Considering the value of the payment, and that it was being made to a cryptocurrency exchange I would have expected HSBC to ask probing questions about the payment to uncover whether Mr S was being scammed. But HSBC only confirmed that Mr S had made the payment. I don't think HSBC did enough during this call.

With the above in mind, I think HSBC is responsible for the payments Mr S made into the scam from 8 June 2022 onwards.

*Did Mr S contribute to his loss?*

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 the circumstances, I do think it would be fair to reduce compensation on the basis that Mr S should share blame for what happened. I've noted that Mr S was inexperienced when it came to this type of investment.

I've also noted that Mr S says he carried out research before investing, yet he received emails from an individual from Bitcoin Trade which was linked to a company called Capital Trade. Both companies have warnings issued on the FCA website. In addition to this Mr S's account manager changed twice during the investment without any real explanation.

Considering the above I think there were some red flags that Mr S should have taken notice of, and further basic research would likely have led him to find he was being scammed. So, I think it would be fair to reduce compensation by 50% on the basis that Mr S should share blame for what happened.

### **Putting things right**

To put things right I require HSBC UK Bank Plc to:

- Refund Mr S the disputed payments from 8 June 2022 onwards.
- Mr S has confirmed the funds originated from his savings account which he had intended to keep there, so HSBC UK Bank Plc should pay Mr S the savings account interest rate on this amount from the date the transactions were made to the date of settlement.

### **My final decision**

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 February 2024.

Terry Woodham  
**Ombudsman**