

The complaint

Mr G complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost as a result.

What happened

In May 2020, Mr G made contact with an individual through Tinder. The conversation moved to WhatsApp where Mr G was persuaded to invest in cryptocurrency.

Unfortunately, Mr G had been scammed – and the cryptocurrency was taken.

Mr G made the following payments.

Date	Payee	Payment type	Amount
22 May 2020	Simplex Paybis	Card payment	£408.50
22 May 2020	Simplex Paybis	Card payment	£57.28
28 May 2020	Simplex Paybis	Card payment	£600
06 June 2020	Simplex Paybis	Card payment	£5,000
09 June 2020	ClearBank	Bill Payment	£4,998
12 June 2020	ClearBank	Bill Payment	£2
15 June 2020	ClearBank	Bill Payment	£500
16 June 2020	ClearBank	Bill Payment	£10,000
17 June 2020	ClearBank	Bill Payment	£10,000
18 June 2020	ClearBank	Bill Payment	£1,000
22 June 2020	ClearBank	Bill Payment	£3,500
29 June 2020	ClearBank	Bill Payment	£2,600
08 July 2020	ClearBank	Bill Payment	£2,600
17 July 2020	ClearBank	Bill Payment	£500
17 July 2020	Coinbase	Credit card	£1,000
20 July 2020	Coinbase	Credit card	£470
28 July 2020	ClearBank	Bill Payment	£2,000
28 July 2020	Coinbase	Credit card	£1,000
		Total	£46,235.78

Mr G complained to HSBC, but it did not uphold his complaint.

Mr G then brought his complaint to this Service and our Investigator looked into things and thought that his complaint should be upheld in part.

Mr G accepted the outcome, but HSBC did not.

It said that Mr G made payments to an account in his name with ClearBank so that liability should lie with that entity – and that the scam was so far removed from the payments made with HSBC that there was no identifiable scam risk.

It also said that it made contact with Mr G on 15 June and that Mr G was adamant that he didn't want any further intervention with his payments – so he would have been adamant again if it had made a further intervention. Finally, it said that Mr G should bear some responsibility for the loss as he had not been careful enough to protect himself from the scam.

As no agreement was reached, the complaint has been passed to me to make 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.

Having done so, I've decided to uphold this complaint in part, for broadly the same reasons as our investigator. I know this will be disappointing for Mr G, so I'll explain why.

It isn't in dispute here that Mr G has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

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 having been good industry practice at the time.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr G authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, HSBC should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is

particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr G when he authorised payments from his account or whether it could and should have done more before processing the payments.

HSBC has provided a call that took place between it and Mr G on 14 June 2020, when Mr G made the £500 payment. During this call it is clear Mr G was unhappy that his payment had been blocked and that he wanted to make sure that this and other payments would not be blocked – but it was explained to him that this would not be possible, and that fraud checks needed to be carried out. The call was transferred to another department, but unfortunately this call is not available, and I have not been provided with any call note that sets out what was said to him at the time, so I can't say that HSBC gave Mr G an effective warning at this time.

That said, I don't consider that HSBC needed to get involved at this point either – the payments up to this point were spaced out and were going to genuine crypto exchanges, and while two of the payments were higher than Mr G's usual spend, I don't think they were so suspicious or unusual for HSBC to have become involved.

However, when Mr G made the first payment for £10,000, this was a significant increase in spending in a short amount of time, and I think that HSBC should have got in touch with Mr G to check that all was well and to question him appropriately about what he was doing.

Had HSBC done so, I think it would have uncovered that it was very likely Mr G was being scammed. I have seen nothing to suggest that Mr G was coached or told to lie to HSBC about what he was doing, and although HSBC says that Mr G was adamant that his payments not be interrupted, HSBC had already told him that this would not be possible and that fraud checks would take place if HSBC had any concerns – and I think that it should have had some here.

So, I think HSBC missed an opportunity to prevent the loss from this point.

I've taken into account what HSBC has said about the liability for the loss lying with ClearBank – it says that as it is a regulated entity in its own right that the complaint should be brought against ClearBank. But Mr G does not hold an account with ClearBank – which aside from being a bank itself also offers agency banking services to crypto exchanges (in this case, Coinbase) which HSBC should already be aware of.

The only thing left for me to consider is if Mr G should bear some responsibility for the loss by way of contributory negligence, but I am not persuaded that this should apply here. Mr G was not an experienced investor – and while he could have perhaps completed more checks than he did, I'm not persuaded that he would have found any negative information about the company he thought he was investing with.

Putting things right

HSBC UK Bank Plc should refund Mr G the payments made in relation to the scam from and including the £10,000 payment on 16 June 2020.

I calculate this to be £34,670. HSBC should also add G 8% simple interest to each payment to the amount it pays Mr G from the date Mr G made the payments to the date it pays the settlement (less any lawfully deductible tax)

My final decision

I uphold this complaint in part. HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 May 2024.

Claire Pugh
Ombudsman