

The complaint

Mr B complains that HSBC UK Bank Plc (“HSBC”) won’t refund money he lost when he fell victim to an investment scam.

Mr B is being represented by a claims management company in this complaint.

What happened

The detailed background to this complaint is well known to both parties. The facts about what happened aren’t in dispute, so I’ll focus on giving my reasons for my decision.

The complaint concerns two faster payments – £2,000 and £2,500 – which Mr B made from his HSBC account in November 2023. These were made in connection with an investment opportunity with a company “C” that he was introduced to by a friend who had already invested and made a profit.

Mr B bought cryptocurrency from “X” and made faster payments from his HSBC account. The cryptocurrency was then deposited into his account with C. It was when he started receiving updates which were “too good to be true”, asking for more investment with unrealistic rewards, that Mr B became suspicious. He tried to withdraw what he had invested and when he couldn’t, he realised he’d been scammed.

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. I’ll explain why.

The first question I need to consider in any case where an allegation of scam has been made is to determine, so far as is reasonably possible, whether the complainant has in fact been scammed. This is important because the expectation on payment service providers, including banks like HSBC, to be on the look-out for and protect their customers against the risk of fraud and scams isn’t triggered where a scam hasn’t taken place.

We asked Mr B’s representative for evidence showing that his dealings were with C and that the payments he made from his HSBC account were linked to C. But no evidence has been forthcoming. So, as a starting point, I’ve not seen sufficient evidence to conclude that Mr B’s payment were scam-related and that he’s lost money to a scam.

But, for the sake of completeness, even if I were to make a finding that Mr B was likely scammed (after provision of evidence), I’m not persuaded that would mean HSBC needs to refund his loss.

Under the Payment Services Regulations 2017 (PSR) and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests

with the payer, even where they are duped into making that payment. There's no dispute that Mr B made the payments, and so they are considered authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it *might* be liable for losses incurred by its customer as a result.

Mr B's representative submits that the disputed transactions were unusual for his account. The representative also argues that the payments were made to a cryptocurrency firm and HSBC should have an automated trigger mechanism that checks payments being made to unregulated cryptocurrency firms irrespective of amount or frequency.

I acknowledge the representative's comments that cryptocurrency related scams are on the rise. I also accept that the transactions in dispute are arguably identifiably cryptocurrency related. But that fact, in and of itself, doesn't mean that a bank should intervene and make further enquiries before processing transactions. Buying cryptocurrency is a legitimate exercise. I would also add that Mr B's payments went to X, who is a legitimate cryptocurrency provider.

In the individual circumstances of this case, I don't consider the individual transactions in dispute were *that* unusual such that I think HSBC ought to have had cause for concern and taken additional steps to establish whether there was a heightened risk of financial harm due to fraud. The transactions weren't for an unusually large amount. And, as the investigator noted, Mr B's account statements show previous cryptocurrency-related activity.

Having thought about this carefully, I haven't seen any other factors at play here such that, in my view, HSBC should have been concerned and ought to have intervened before processing the transactions.

What this means is that in the circumstances of this case, I don't consider HSBC acted unfairly in executing the payment instructions it received from Mr B. It follows that I don't find it liable for his financial loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 December 2024.

Gagandeep Singh
Ombudsman