

The complaint

Mr P 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 it to refund him the money he has lost.

What happened

Mr P says that he had seen cryptocurrency going up in value and received a call after doing some research online. He was persuaded to make an investment, but this turned out to be a scam.

Mr P made several payments as part of the scam – some of these payments have already been considered under a different complaint. The payments considered in this decision are listed below.

Date	Payee	Payment type	Amount
15 May 2019	Globee Pay	Card payment	£191.23
28 June 2019	Maja Industrie	International payment	£5,000
16 October 2019	Coinfy	Card payment	£720
		Total	£5,911.33 (plus fees of £29.38)

Mr P complained to HSBC, but it didn't uphold his complaint.

Unhappy, he brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr P asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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 not to uphold Mr P's complaint for broadly the same reasons as our Investigator. I know this will be disappointing for Mr P, so I'll explain why.

It isn't in dispute here that Mr P 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 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 P authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the 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 above, 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 made 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 P when he authorised payments from his business account or whether it could or should have done more before processing the payments.

Having considered the payments Mr P has made, I'm afraid I don't think that any of the individual payments were significantly unusual or uncharacteristic enough for HSBC to have first got in touch before processing the payments on request.

While I do think that the payment of £5,000 was larger than usual for Mr P, I don't think that it was so unusual for HSBC to have had concerns that Mr P may have been at risk of financial harm, especially for the time that it was made. I am unable to find any information about the payee that would have been available at the time for HSBC to have concluded that the payment was going to an identifiable crypto exchange – and also in 2019, crypto scams were not as common as they are today.

So, I am not persuaded that HSBC would have had cause to intervene in the payments, and I don't think that it missed an opportunity to stop the payment.

I am very sorry for the situation Mr P finds himself in – I know that he has lost a lot of money due to the scam. But this is the fault of the scammers themselves – and I can't ask HSBC to refund him when I don't think that it has done anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 July 2024.

Claire Pugh
Ombudsman