

The complaint

Ms C is unhappy that HSBC UK Bank Plc (HSBC) won't refund payments she made after falling victim to a scam.

Ms C's complaint was brought by a representative. However, as the account is in Ms C's name, I'll refer to her throughout the decision.

What happened

In August 2020, after receiving numerous phone calls trying to get her to invest, Ms C decided to invest £250 in cryptocurrency. Ms C invested with a firm I'll refer to as B.

Ms C says that after she made the initial investment, she received calls from B trying to get her to increase her investment. But she decided not to invest further and ignored their calls.

In October 2021, Ms C received a call from someone supposedly working for B. She was told that due to the increase in cryptocurrency values her £250 investment was now worth £16,000. Ms C says she hadn't been following her investment or cryptocurrency prices but had heard that prices had increased. Ms C was told in order to claim her £16,000 investment, she needed to open an account with a cryptocurrency exchange. Ms C says the scammer talked her through the process and she opened the account. Ms C says she was pressured into acting quickly, with B telling her that if she didn't claim her funds they would be lost.

Having opened the cryptocurrency account, Ms C was then told she had to pay a £2,000 deposit, which would be returned to her with the withdrawal of the £16,000. Ms C wanted to check that her cryptocurrency account worked and that she could access any funds paid into it, so she sent an initial payment of £100 which she immediately withdrew. Satisfied that she could withdraw funds she paid the £2,000 deposit on 13 October 2021 by sending money from her HSBC account to her cryptocurrency account and then onto the scammer. Ms C was then convinced that she had to pay further fees. So, Ms C made a further payment the same day, again from her HSBC account to her cryptocurrency account and then onto the scammer, for £3,000.

The second payment of £3,000 flagged with HSBC's fraud detection system and they called Ms C to discuss the payment.

Following their discussion, HSBC were satisfied that Ms C wasn't at risk of falling victim to a scam and released her payment. Minutes later Ms C made a further payment to the scammer for £5,000. So, in total, Ms C made three payments totalling £10,000.

Ms C was told that her funds would be paid out to her cryptocurrency account on 18 October 2021. When the funds didn't arrive, she realised she'd been the victim of a scam and called HSBC to raise a fraud claim.

HSBC investigated Ms C's fraud claim but declined to refund her. They told Ms C that as she sent funds to an account held in her name with a cryptocurrency exchange, the loss hadn't

occurred when the funds left her HSBC account - so they weren't liable to refund her.

Ms C wasn't happy with HSBC's response, so she brought a complaint to our service.

An investigator looked into Ms C complaint and didn't uphold it. The investigator referred to the call Ms C had with HSBC when the second payment of £3,000 triggered their fraud detection system. The investigator felt the HSBC staff member had asked multiple questions and provided information about relevant scams which ought to have caused Ms C concern, however Ms C continued with the payment regardless.

Ms C didn't agree with the investigator's opinion saying:

- The bank didn't ask open or probing questions, which they should've.
- The way the bank rattled through a load of things, it would be very difficult for a normal person to understand the warnings.
- The questions the bank asked weren't relevant to what was obviously a cryptocurrency scam.

As Ms C disagreed with the investigator's opinion, the case was passed to me to review.

My provisional decision

On 9 November 2022 I issued a provisional decision as I intended to reach a different outcome than the investigator had. I asked for both parties to provide any more comments or evidence they wanted to be considered before issuing my final decision.

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam.

Should HSBC have prevented Ms C from making the payments?

In total Ms C made three payments, these were for £2,000, £3,000 and £5,000. I'm not satisfied based on Ms C's previous account usage that the first payment should've been flagged by HSBC as concerning. I say this because she had previously made payments out of her account for £5,000, £4,000 and just over £1,000. So, I'm not satisfied that this payment of £2,000 was particularly unusual or out of character.

However, HSBC did flag the second payment of £3,000. As a result, HSBC called Ms C to discuss the payment and make sure she wasn't at risk of financial harm from falling victim to a scam.

Having listened to the call Ms C had with HSBC, I'm not satisfied HSBC went far enough in their questioning, and believe they missed the opportunity to prevent Ms C from making further payments as part of the scam.

In the call, the HSBC staff member asked the purpose of the payment and Ms C told them she was buying bitcoins. She was then asked if she had opened the account she was sending the money to, and she confirmed she had. There were some questions around which bank the account was held with and it's clear that Ms C didn't understand how to answer this, as the account was with a cryptocurrency exchange – not a traditional bank. The staff member also seemed confused and moved away from this question without fully exploring who the account was held with and what Ms C understood about the cryptocurrency account she had opened. Ms C was asked how long she had been doing this, referring to buying bitcoins, and she said only recently and that it was recommended by friends. She then asked why this was important. Instead of probing, the staff member told her he'd explain later on.

At the point Ms C made these payments, HSBC were well aware of cryptocurrency investment scams and how they work. And the script that the staff member was following, was trying to identify if Ms C might be at risk of this type of scam. As part of it the staff member read out some information about cryptocurrency scams, saying criminals advertise on social media, will phone, text or email you unexpectedly and often look professional. However, there was little real probing or open questioning, even when Ms C was clearly unsure of what she was investing in. This is particularly concerning as I think more probing would've quickly identified that Ms C was the victim of a scam. I appreciate that Ms C said she was referred to the investment by a friend, but she didn't have a cover story and wouldn't have been unable to explain how the cryptocurrency investment worked, or even how her cryptocurrency account worked. I also think further questioning about the payments she was making, why she was making two separate payments, is likely to have uncovered that she was paying fees to release an investment – which would've concerned HSBC.

Also, as part of the discussion, the staff member referred to fraudsters closing an account and refusing to release the funds or asking for fees before the funds were released. And I'm conscious that this directly relates to Ms C's circumstances. But this information was part of a larger amount of information the staff member read out quite quickly and it wasn't given in a clear manner. The staff member also moved quickly onto emphasising that if Ms C was the victim of a scam, she wouldn't get her money back. The inability to recover her funds was emphasised several times and felt like the core component of the warning. I think the staff member referring to "fees being requested before funds are released" should've caused Ms C to pause, which I'll discuss shortly when I look at whether Ms C took reasonable steps to mitigate her loss. But I'm not satisfied that the scam warning was clear enough, or discussed in a way that satisfies me that HSBC had an appropriate conversation with Ms C. HSBC were the professionals in this situation and should've identified the clear warning signs that Ms C was the victim of a scam.

Overall, I'm not satisfied that HSBC appropriately questioned and probed Ms C, and believe if they had they would've uncovered the scam preventing Ms C from making the second and third payments. On that basis, and subject to what I say below, HSBC should refund Ms C for the second and third payments.

Could Ms C have done more to mitigate her loss?

But I also have to consider whether Ms C should've taken steps to mitigate her loss, and I think she should've.

In this case, Ms C did a test payment of £100 to her cryptocurrency account and was able to immediately withdraw the funds, which she says fed into the legitimacy of what she was being told by the scammers. But there were a number of red flags that should've concerned her and caused her to do further checks before making the payments. These include:

- *I can't see that Ms C checked or had any confirmation that her £250 investment had grown to £16,000 – outside of her being told this by the scammer. I also can't see any contracts or written confirmation of what B were charging her for in relation to the fees she was paying. I would expect something in writing to confirm what Ms C was being told.*
- *If Ms C had an investment worth £16,000, it seems unlikely that she would have to pay fees to release the funds. I accept that she was told the first payment was a deposit and would be refunded, but I'm not satisfied that she was given a reasonable explanation as to why she had to pay a further £8,000 in order to access her investment. I also can't see that Ms C questioned why these funds couldn't be taken out of her investment funds.*
- *During the call with HSBC, Ms C was given some information which fitted with the circumstances she was experiencing and what the fraudsters were asking her to do. She asked why the staff member wanted to know how long she'd been buying bitcoins for. Also, the staff member described how fraudsters will ask for fees before they will release funds. I would've expected Ms C to have some concerns after this conversation and to have done some research or checks on the information she had been given.*

Based on this, I'm not satisfied that Ms C did sufficient checks before making the second and third payments. So, I think it's fair for Ms C to share the responsibility for her loss with HSBC, and only ask HSBC to refund 50% of the second and third payments. As the funds Ms C sent to the scammer came from her Future Saver account, HSBC should pay interest on the refund at the rate applicable to that account, calculated from the date Ms C made the payments until the date of settlement.

My provisional decision

My provisional decision is that I intend to uphold this complaint.

To put things right HSBC UK Bank Plc should:

- *Refund Ms C 50% of her second and third payments*
- *Pay interest on that refund at the Future Saver account interest rate, calculated from the date the payments were made until the date of settlement.*

Responses to the provisional decision

Both HSBC and Ms C responded to say they had nothing further to add.

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.

As neither party has provided any new evidence for me to consider, I see no reason to reach a different outcome than I did in the provisional decision. Therefore, HSBC should refund 50% of the second and third payments and pay interest on that refund at the account interest rate.

Putting things right

To put things right HSBC UK Bank Plc should:

- Refund Ms C 50% of her second and third payments
- Pay interest on that refund at the Future Saver account interest rate, calculated from the date the payments were made until the date of settlement.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Ms C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 14 December 2022.

Lisa Lowe
Ombudsman