

## The complaint

Miss J is unhappy HSBC UK Bank Plc refused to refund all the money she lost as the result of an authorised push payment (APP) scam.

## What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Miss J saw an advert for a crypto investment opportunity endorsed by a 'celebrity' businessman on a social media platform. She contacted the number and was persuaded by the scammer to invest in Company B.

Between 14 April 2022 and 14 November 2022 Miss J made payments totalling £318,625.08. She received three credits of £20,000 at the end of August/beginning of September meaning her total claimed losses are £258,625.08, as set out below. Payment 1 was made by debit card, from 2 onwards they were all faster payments.

payment	date	value, £	to Miss J's account at:
1	14/04/2022	25.08	Wise
2	15/04/2022	25,000	Wise
3	16/04/2022	13,500	Wise
4	19/04/2022	25,000	Wise
5	20/04/2022	24,800	Wise
6	20/04/2022	200	Wise
7	21/04/2022	17,000	Wise
8	25/04/2022	25,000	Wise
9	18/05/2022	25,000	Wise
10	18/05/2022	18,600	Wise
11	11/08/2022	4,000	Skrill
12	15/08/2022	10,000	Skrill
13	15/08/2022	9,500	Skrill
14	16/08/2022	6,000	Skrill
15	19/08/2022	15,000	Skrill
16	26/08/2022	5,000	Skrill
17	30/08/2022	2,000	Skrill
18	30/08/2022	20,000	Skrill
19	31/08/2022	20,000	Skrill
20	01/09/2022	20,000	Skrill
21	26/10/2022	1,500	Coinbase
22	26/10/2022	6,500	Coinbase
23	26/10/2022	12,500	Coinbase

24	14/11/2022	12,500	Coinbase
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To note, on 12 August 2022 Miss J also had tried to make a payment of £3,000 to Skrill but this had been reversed following HSBC's intervention and subsequent discussion with Miss J.

Miss J funded the payments from her pension, savings, informal borrowing from family and friends and by taking out loans. She realised it was a scam when she was asked to pay a range of fees in order to withdraw her funds.

Miss J says HSBC failed to protect her. It did not provide effective warnings and when it did intervene it failed to ask probing questions.

HSBC made a goodwill offer to Miss J, without admission of liability. It said:

- For the Wise payments it was not the point of loss and Miss J must contact Wise to make a claim.
- For payments 12-24 it ought to have done more to protect Miss J, but equally she missed clear red flags. It therefore offered to refund 50% of the value of those transactions.

Our investigator concluded HSBC's offer was largely fair, except that it should include payment 11. She said this as payment 11 triggered an intervention but she found it was not effective. Had it been handled in the way the fraud call was for the £3,000 payment on 12 August (that was reversed) she felt HSBC would have prevented that loss. She explained that as Miss J had not provided her Wise statements she had no evidence that those transfers had caused Miss J a loss. So she had not reviewed HSBC's actions with regards to payments 1 to 10.

HSBC accepted this assessment on a without prejudice, gesture of goodwill basis and agreed to refund 50% of payments 11 to 24.

Miss J did not accept the assessment and maintained she should receive a full refund for all payments. She said she cannot access her Wise account (the scammer did this for her remotely) but she says the transaction receipts she submitted evidence her losses. Payments 1-10 were out of character and HSBC did not protect her with effective warnings or calls.

I reached the same conclusion as the investigator, but made different findings, so I issued a provisional decision to give both parties a chance to comment. An extract follows and forms part of this final decision. I asked for any comments and new evidence by 21 February 2024.

#### *Extract from my provisional decision*

*There's no dispute that Miss J made and authorised the payments. Miss J knew why she was making the payments. At the stage she was making these payments, she believed she was moving money to allow her to start investing in cryptocurrency through Company B. I don't dispute Miss J was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.*

*It's also accepted that HSBC has an obligation to follow Miss J's instructions. So in the first instance Miss J is presumed liable for her loss. But there are other factors that must be considered. To reach my decision I have taken into account the law, regulator's rules*

*and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as none of the payments were made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.*

*This means I think that HSBC should have:*

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

*In this case I think HSBC ought to be held liable in part for some of the transactions. I'll explain why.*

#### *Payments 1-10*

*I note HSBC feels strongly that it was not the point of loss and that Wise ought to be held liable. But I am satisfied based on the available evidence that HSBC has a case to answer here for payments 8, 9 and 10, and it is with HSBC that Miss J's dissatisfaction lies as she believes it ought to have protected her in the first instance.*

*I say this as we have now had sight of Miss J's account activity at Wise. Until 26 April 2022 the money Miss J moved across from HSBC she then moved on to another UK bank account in her own name. So I think HSBC's argument that it cannot be seen as the point of loss for those funds is reasonable. However for payments 8 to 10 the money was moved immediately on to the scammers' crypto wallets. And so I don't agree that the loss from these payments cannot be considered when assessing HSBC's liability in this case. This is because by 2022 HSBC was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers.*

*As HSBC intervened when Miss J first attempted to transfer £25,000 to Wise on 15 April 2022 I have a fair understanding as to whether HSBC would most likely have done what it should if payment had 8 triggered an intervention. Initially on 15 April 2022 HSBC asked Miss J to visit a branch with proof of identification. She did this but as the branch was closing, she then rang the fraud team back.*

*On this call she was not transparent, she did not disclose that the payment was for a crypto investment, rather she said the money would be for her personal use – mentioning refurbishment. She inaccurately said that nobody had asked her to open the Wise account. So whilst HSBC gave her a scam warning it was unable to tailor it to her actual circumstances and talk about the risk of crypto investment scams. Or to ask the questions we would expect had Miss J been honest about what the money was for.*

*So, on balance, I don't think an intervention from HSBC would have broken the spell of the scam for Miss J had it spoken to her at the time of payments 8, 9 or 10. Had she been open about the context of the payments there were plenty of red flags that I think would most likely*

have allowed HSBC to prevent her loss.

It follows I am not instructing HSBC to refund payments 8 to 10.

#### Payments 11-24

*I agree with the investigator, and for the same reasons, that HSBC could have prevented Miss J's losses from payment 11 had it intervened effectively as it did on 12 August when Miss J tried to move £3,000 to her Skrill account. So I find it fair to conclude that HSBC should be held liable for Miss J's losses from payment 11 onwards, not 12.*

*I've then considered carefully whether Miss J should hold some responsibility for her losses by way of contributory negligence as HSBC argues. I think she should, as from the evidence I have seen it seems Miss J carried out minimal checks on the investment opportunity – she appears to have looked only at the website the scammers pointed her to, rather than doing any independent research and checks. And there were negative reviews online about Company B at the time she lost her money. Miss J also said she continued to make payments to the scammer despite concerns, and she was happy to follow the scammer's instructions not to disclose his involvement to HSBC. Overall, I find Miss J was willing to invest significant sums without an appropriate level of due diligence when, by her own admission, she had no prior investment experience.*

*I have then looked at whether HSBC did what we would expect in a scam case to try to recover the funds. It contacted the recipient firms but no funds remained. However, irrespective of the action it took, in the circumstances of this case - as the funds had been moved onwards and Miss J knew this, I am satisfied there was no reasonable opportunity for HSBC to recover any of the funds. As payment 1 was made by debit card HSBC could have raised a chargeback but I think it was fair not to. I find it would most likely have been unsuccessful as the payment did not match any of the criteria that the chargeback scheme require payments to meet to be refunded.*

I then set out what HSBC would need to do to put things right.

Both parties responded to my provisional decision. Miss J said she accepted the decision.

HSBC said on a without prejudice, gesture of goodwill basis, it was willing to refund Miss J in line with the provisional decision. It did, nevertheless, wish to make the point that as payments 1-10 went to an account in Miss J's name, at a regulated payment services provider (PSP), it was not the point of loss and it had no visibility of the onward payments from Wise which resulted in Miss J's loss. A distinction is drawn by the ombudsman between payments 8 to 10 and payments 1 to 7, because the former were sent directly to a crypto exchange from Wise, whereas the latter were sent to another PSP.

But it had no visibility as to use of the payments after they left HSBC and so does not understand how a distinction can be drawn between the earlier payments which went to another PSP and the later payments which went to a crypto platform. It wants to highlight that this approach is not in line with the forthcoming mandatory reimbursement reforms.

#### **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.

I note HSBC agreed to put things right as I set out in the provisional decision but still wished to make some comments.

I have considered the points it made. HSBC seems to be suggesting it didn't have any obligations when the payments were sent to Miss J's own account, but it's difficult to reconcile that with the fact they did intervene and question her about payment 2.

The distinction I made between payments 1-7 and 8-10 was not as it said because the former went to a PSP and the latter to a crypto exchange. But rather that payments 1-7 went from Wise to another account in Miss J's name versus payments 8-10 that went from Wise to the scammer. And by 2022 HSBC was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers. However, given Miss J's responses when HSBC did intervene, I concluded that HSBC wasn't at fault for not preventing her fraudulent losses regarding payments 8-10. So, regardless of HSBC's thoughts on the standard we've applied, that doesn't affect the outcome I reached.

HSBC also referenced the pending reforms to APP scam reimbursements, but as it knows we consider complaints in the context of the regulations, best practice and industry codes in place at the time the event complaint about occurred.

### **Putting things right**

HSBC should:

- Refund £40,250 as offered, which is 50% of payments 12-24 (net of the £60,000 credited back to Miss J's account)
- Refund 50% of payment 11 – so £2,000
- Add 8% simple interest\* from the date of each payment until the date of settlement.

\*If HSBC deducts tax from the interest element of this award, it should provide Miss J with the appropriate tax certificate so she can submit a claim to HMRC if applicable.

### **My final decision**

I am upholding Miss J's complaint in part against HSBC UK Bank Plc and it must now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 1 April 2024.

Rebecca Connelley  
**Ombudsman**