

The complaint

Miss W complains HSBC UK Bank Plc didn't do enough to protect her when she fell victim to an investment scam and won't refund the money she lost to it.

What happened

Miss W met a man, who I'll refer to as the scammer, on an online dating platform. She explained that after three weeks of chatting, the scammer introduced her to a crypto investment opportunity and advised her to set up a trading account with an investment platform (L), which was a clone of a legitimate firm.

Miss W said the scammer seemed very knowledgeable and advised her she could start with a small deposit and, if she decided the investment was not suitable, she could recover her money. On 8 August 2022, on the scammer's instruction Miss W initially purchased £300 of crypto via a legitimate crypto exchange (C), which she then transferred to the trading account with L. Miss W said she saw her investment making a profit, so she decided to make further investments.

Miss W said that when she had made a profit she was happy with, she attempted to withdraw them from her trading account with L, but was told by the scammer that she first needed to pay additional taxes and fees. Miss W said that from 22 August 2022 onwards she understood her payments were going towards taxes and fees to enable her to withdraw her profits. Miss W took out loans with HSBC to fund these payments.

Despite making the additional payments Miss W was unable to make withdrawals from her trading account. Miss W said she realised she'd been scammed when she asked to borrow money from a friend to cover additional fees and her friend advised her she was being scammed.

The relevant transactions are as follows:

Payment	Date	Payment type	Debit	Credit
1	8 August 2022	Card payment to C	£300	
2	12 August 2022	Faster payment to C	£5,000	
3	15 August 2022	Faster payment to C	£25,000	
4	16 August 2022	Faster payment to C	£18,000	
5	22 August 2022	Faster payment to C	£6,000	
6	24 August 2022	Faster payment to C	£5,000	
	24 August 2022	Credit – Loan capital		£12,500
7	25 August 2022	Faster payment to C	£10,000	
	25 August 2022	Credit – Loan capital		£15,000
8	25 August 2022	Faster payment to C	£15,000	
9	26 August 2022	Faster payment to C	£1,900	
	30 August 2022	Credit – Loan capital		£25,000
10	30 August 2022	Faster payment to C	£13,000	
11	31 August 2022	Card payment to C	£60	
12	16 September 2022	Card payment to C	£907.93	
13	16 September 2022	Faster payment to C	£7,400	
14	16 September 2022	Faster payment to C	£50	
		Total	£107,617.93	£52,500

Miss W said she reported the scam to HSBC in September 2022 and asked for help recovering the funds. HSBC advised Miss W that her funds could not be recovered.

In January 2023, Miss W complained to HSBC, via a professional representative, that it failed to do enough to protect her from the risk of financial harm from fraud. Miss W's representative noted that while HSBC had contacted her before processing the third and fourth payments, it only sought to verify that it was Miss W making the payment. The representative said HSBC had failed to provide her with any scam education or an effective warning. It argued that HSBC ought to have continued to intervene during the payment journey, and particularly on payments eight and ten. It argued HSBC failed to take steps that could have prevented Miss W's loss.

HSBC didn't accept responsibility for Miss W's loss. It noted that it had intervened on multiple occasions and had asked Miss W about the payments. On each occasion Miss W had confirmed the payments were genuine and going to an account in her own name that only she had access to. She also confirmed she understood the scam warnings she'd read and been given over the phone. HSBC also argued that as the payments went to an account in her own name and control, before they were transferred to the scammer, it was not responsible for the loss as it was a "me-to-me" transfer. It was unable to find record of a call in September 2022 in which Miss W claimed to have reported the scam, but it paid her £250 compensation in recognition of any error or missed opportunity to provide her with support at an earlier stage.

Miss W was unhappy with HSBC's response and referred her complaint to the Financial Ombudsman. Our Investigator didn't uphold the complaint. She was satisfied that HSBC had intervened appropriately but that it was unable to uncover the scam due to the answers Miss W provided.

Miss W's representative disagreed on her behalf and asked for an Ombudsman's decision. It said that HSBC ought to have invoked the Banking Protocol due to the unusual nature and size of payments. It also said HSBC ought to have realised that Miss W was misleading it during its calls with her. It also argued that HSBC should have provided Miss W with specific scam scenarios which would have resonated with her.

I issued my provisional decision on 4 June 2024 explaining why I was minded to uphold Miss W's complaint in part. I have set out my provisional findings below, but in summary, I explained why I considered HSBC ought to have taken further steps to intervene in the later payments given it knew she was using borrowed funds against the loan agreement. I concluded that it should therefore have prevented part of Miss W's loss.

"What I've provisionally 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'm partially upholding this complaint as I think HSBC ought to have prevented some of Miss W's loss. I'll explain why.

I'm sorry to hear Miss W was the victim of a cruel and sophisticated scam. I can appreciate why she wants to do all she can to recover the money she lost. But I can only direct HSBC to refund her losses if it can fairly and reasonably be held responsible for them.

Should HSBC be held liable for Miss W's loss?

In line with the Payment Services Regulations 2017 (PSRs), the starting position is that Miss W is liable for payments she authorises – and HSBC generally would be liable for unauthorised payments taken from her account.

It is accepted that Miss W authorised all the payments that left her account, which included both card payments and transfers. So, although she didn't intend the money to go to the scammers, under the PSRs Miss W is presumed liable for her loss in the first instance.

There are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment to help protect its customers from the risk of financial harm from fraud. I should point out that this includes cases where payments are being made into an account in the consumer's own name and control.

While HSBC has suggested it is not responsible for losses that occur after a "me-to-me" transfer, it should be well aware of our position in relation to multi-stage scams. The potential for multi-stage scams ought to have been well known to HSBC by August 2022 and as a matter of good practice it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams – particularly those involving crypto. And in any event, it seems it was on the look-out for the unusual or uncharacteristic payments, as demonstrated by the fact it intervened on multiple occasions.

The issues for me to consider is whether HSBC intervened at the right time, whether its interventions were proportionate to the risks it identified and whether any further intervention would most likely have prevented Miss W's loss.

Should HSBC have intervened in the payments and would it have prevented the loss?

HSBC didn't intervene on the first payment and given its relatively low value I wouldn't have expected it to. But it did intervene when Miss W attempted to make payments two to

four. On each occasion when Miss W processed the payment online, she was asked for the payment purpose, to which she answered "investment". She was then presented with an onscreen warning that said "Caution - this could be a scam". It went on to warn "Fraudsters can offer what appear to be genuine investment opportunities and may pressure you to invest your savings". It also listed some steps Miss W could take to protect herself from fraud before proceeding with the payment – for example, checking the FCA register and if the company was listed on the Cloned Firms page. Miss W was also phoned by HSBC's fraud team.

Having listened to the initial three calls, I think HSBC missed some opportunities to uncover more information about Miss W's payments that would have helped to identify she was at risk of financial harm from fraud. For example, in the first call the adviser asked Miss W what checks she'd carried out to verify the company and she answered that her "friend uses it". There was an opportunity here to probe more to understand who the friend was, how they came to learn about the investment and whether they themselves presented any risks (which would have been the case as Miss W had only recently met the scammer online).

HSBC also missed opportunities to understand more about the risks associated with Miss W's proposed payments. While it uncovered that she was investing in crypto and that her payments were going to a legitimate crypto exchange, it did not ask what she planned to do with the crypto once it was in her account – including whether she planned to move it to an external account or if anyone was guiding her on which trades to make. The scam warning that was read out to her also didn't highlight the key features of a crypto investment scam.

But despite this, I'm not persuaded, on balance, that Miss W would have decided not to proceed with the payments even if HSBC had asked more questions or provided more specific warnings.

Having listened to the calls, my impression was that Miss W was resistant to any intervention from HSBC. She seemed to consider the questions from HSBC to be an intrusion on her right to use her money and account as she pleased, rather than a measure to protect her from financial harm. As a result, Miss W was not forthcoming with information and answered questions as narrowly as possible, often repeating the same one-word answer to multiple questions. At one point she refused to answer further questions and asked that her payment be released, stating that she would accept the risk if it turned out to be a scam.

I'm also conscious that Miss W had developed a close and trusting relationship with the scammer, so much so that she was prepared to make a large investment on the strength of his recommendation.

So, I cannot say with any confidence that had Miss W been asked any further clarifying questions prior to payments two to four she would have provided enough information to HSBC for it to have uncovered the scam, or that she would have decided not to go ahead with the payments.

I would not have expected HSBC to have intervened on the next two payments, given they were for comparatively lower sums to the earlier payments and given the outcome of its earlier interventions. But I am mindful that from payment seven onwards, Miss W funded the ongoing payments with loans she had obtained from HSBC, and I think this ought to have been a significant concern to HSBC.

Putting aside any questions I may have about the affordability of the three loans totalling £52,500 that HSBC granted to Miss W over a six-day period, I think at this stage HSBC ought to have been alerted to the potential that Miss W was at a heightened risk of financial harm from fraud. By this point it was aware that it had lent a considerable sum of money to Miss W, presumably not for investment purposes. It also knew that Miss W's payment instructions, which utilised most of the borrowed funds, were identifiably going to a crypto provider, which in itself would have been considered extremely high risk. HSBC should also have been aware that borrowing to invest is a hallmark of many investment scams.

While HSBC did speak to Miss W on 25 August 2022, before processing her £10,000 payment request, I can't see that it went far enough here. It didn't ask Miss W about the loan funds and why she was attempting to use them to buy crypto, which presumably HSBC would not have agreed to. Nor would it have been in keeping with her stated purpose when taking out the loans.

I would also have expected HSBC to ask probing questions about why Miss W needed to borrow funds to invest, particularly as she was of the belief that her investments had been successful. While Miss W had not previously been forthcoming in the information she gave, given what HSBC knew about her use of loan funds to purchase crypto, I think it would have been incumbent on it to have probed sufficiently and obtained the necessary information and reassurance from Miss W before releasing the payment. And so, I think this would've likely led Miss W to provide enough information about the true purpose of the payments – that being that she was paying withdrawal fees – and this ought to have alerted HSBC to the fact she was being scammed.

Upon HSBC becoming aware Miss W was being scammed it should have provided clear, relevant, and tailored warnings for her circumstances. And I've no reason to think she wouldn't have been receptive to such a warning – particularly as she heeded her friend's advice when she tried to borrow from her.

But even if Miss W had not been forthcoming with information, or had not heeded HSBC's warnings, I think there was enough going on for HSBC to realise that she was at a significantly heightened risk of financial harm from fraud. In the circumstances I would have expected HSBC to have made clear to Miss W that she could not use the loan funds for the purposes she was intending, and if she refused, it should have refused to lend to her. Yet I cannot see HSBC gave any consideration to recalling the loan to prevent Miss W getting into debt through such an 'investment'. And indeed, HSBC went on to lend on two further occasions, bringing her total borrowing from HSBC to £52,500 in just six days.

In the circumstances, it is hard to understand how HSBC justified lending such a considerable sum of money to Miss W, in such a short space of time, particularly when Miss W was clearly spending the money on crypto rather than for the reason she gave when applying for the loans. And given its actions I fail to see how HSBC could have met its obligations with regard to lending responsibly, let alone protecting its customer from financial harm due to fraud.

As such, I consider that HSBC should have prevented Miss W's loss from the seventh payment onwards.

Should Miss W bear some responsibility for his loss?

I have thought carefully about whether Miss W should bear some responsibility for her loss by way of contributory negligence (which might justify a reduction in compensation). And I think she should.

When considering whether a consumer has contributed to their own loss, I must consider whether their actions showed a lack of care that goes beyond what we would expect from a reasonable person. I must also be satisfied that the lack of care directly contributed to the individual's losses.

Having considered the overall circumstances of what happened, I'm not persuaded Miss W took reasonable care to protect herself from the risk of financial harm. I consider that a reasonable person would have had enough reason to question the legitimacy of what was going on, and would ultimately not have made the payments, I say this because:

- *She "invested" nearly £50,000 over the space of eight days on the advice of someone she'd known for just a few weeks.*
- *Despite being a novice investor, she didn't seek any independent financial advice, or carry out any meaningful checks into what she was doing before investing a considerable sum of money – despite being advised to do so by HSBC's onscreen warning.*
- *She does not appear to have questioned information provided by the scammer that was inconsistent or implausible. For example, during the course of the scam she was directed to various websites that bore no relation to L, who she thought she was dealing with. She also did not appear to question the scammer when she was provided with the "latest website address", which again bore no resemblance to the previous address and made no mention of L.*
- *She was resistant to HSBC's intervention in the payment journey and was not forthcoming with information that would have helped it to uncover that she was falling victim to a scam.*
- *She seemingly did not question why she was being asked to pay fees that ultimately exceeded the value of her initial investment – in total she sent in excess of £57,000 in fees and taxes, which she financed through HSBC loans.*
- *She does not seem to have questioned the scammer when they told her she'd made a "mistake" and sent the wrong amount to cover a certain tax bill that required her to send the amount again.*

As such, I think it is fair in the circumstances that HSBC and Miss W share equal responsibility for the loss she suffered from 25 August to 16 September 2022.

Putting things right

I intend to direct HSBC to refund 50% of the payments made between 25 August and 16 September 2022. As these funds originated from loans HSBC provided, and which I believe are still outstanding, I consider HSBC can reasonably use these funds to offset the amount Miss W owes should it wish to do so. It should also remove any interest and charges applied to the loans on the basis that the first loan should have been recalled when it understood how Miss W intended to spend the funds and the further two loans should never have been granted.

I do not consider that HSBC needs to add interest on to the award as I am mindful that the funds came from borrowed funds, and so Miss W would not have had access to these were it not for the scam and I cannot therefore conclude she lost the use of those funds.

I also do not consider it would be appropriate to award further compensation in respect of Miss W's non-financial loss in the circumstances. Nor will I make any award in respect of her legal fees, as Miss W was able to bring her complaint to the Financial Ombudsman for free.

My provisional decision

I intend to uphold this complaint and direct HSBC UK Bank Plc to:

- Refund 50% of Miss W's losses between 25 August and 16 September 2022. HSBC can, should it wish, offset this refund against the amount Miss W owes in respect of the loans.*
- Write off any interest and charges associated with the loans HSBC granted between 24 August and 30 August 2022."*

Miss W accepted my provisional decision. HSBC confirmed receipt and confirmed it had no further comments to make.

The case has now been passed back to me to reach 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.

As neither party has raised any further points or evidence for my consideration, I see no reason to depart from what I've set out in my provisional decision.

I therefore uphold the complaint in part, on the basis that HSBC ought to have done more to prevent Miss H's loss.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund 50% of Miss W's losses between 25 August and 16 September 2022. HSBC can, should it wish, offset this refund against the amount Miss W owes in respect of the loans.
- Write off any interest and charges associated with the loans HSBC granted between 24 August and 30 August 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 2 August 2024.

Lisa De Noronha
Ombudsman