

The complaint

Miss L is unhappy HSBC UK Bank Plc won't refund £82,000 she lost as the result of a scam.

What happened

I'm not going to cover all the points raised in detail. The view of 4 March 2022 covered the detailed timeline of the transactions and the details of Miss L's testimony. But briefly in December 2020, Miss L was contacted by someone who she thought was a very close family friend via social media but unbeknown to her at the time was in fact a scammer. Miss L said his profile picture matched her friend's identity. After chatting online for a while, her friend asked to borrow some money to invest in a big project. Miss L explained that he initially asked to borrow £10,000 and promised to return the money back to her in February 2021 - with interest. Four days later the scammer told Miss L a profit had been made and he now needed more money to become a major investor and this would give him the power to withdraw cash at any time. Between the 18 December 2020 and 8 January 2021, Miss L made a total of five transfers to two different bank accounts totalling £82,000.

HSBC did not offer a refund. It said Miss L authorised the payments and it acted on her payment instructions. It acknowledged it made some errors with the recovery of Miss L's funds, but said this wouldn't have made a difference as it wouldn't have been able to recover the funds anyway because the beneficiary account holder wouldn't have given permission.

Our investigator partially upheld the complaint. She thought that HSBC ought to have done more than it did and that it should have been concerned from the first transaction onwards. She felt if it had intervened it would have stopped the scam. However, the investigator considered by the time Miss L made the final transaction – Miss L ought to have been concerned and should therefore bear some of the responsibility for this transaction.

I issued my provisional decision on 13 July 2022. HSBC did not respond. It did ask for longer but still has not responded. I am conscious that it took over three months for HSBC to respond to the investigator's view and I don't think it is fair on Miss L to wait any longer. It also provided comprehensive submissions in response to that view and the main reason for issuing a provisional decision rather than a final decision was because I decided Miss L should bear 50% responsibility from an earlier date than the investigator concluded.

Miss L responded. She pointed out there was an error in my provisional decision with regard to the reporting date of the scam – which she explained and evidenced was in fact 18 February 2022. She also explained several reasons why she should be refunded 80% rather than 50% of the transactions. In summary she said:

- She had the savings account for over 30 years and kept excellent credibility. She had never made single international payment in her banking record until the scam took place. The out of character payments should have raised enough concerns for the bank to take action.

- She authorised the payments in an isolated environment during lockdown because of the pandemic. She was suffering with her mental health and the psychological impact of Covid whilst she was targeted by the callous scam.
- Scams like these are well known to banks, as a financial service professional, HSBC had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud which banks are generally more familiar with than the average customer. Unfortunately, it failed to take necessary steps to protect her before it simply processed the payment without question.
- There were some concerning acts of the financial services professional, after her report of scam. The bank subsequently admitted it made errors with payment traces and claimed that “it wouldn’t have made a difference in terms of the recovery of funds”, it also claimed that its intervention wouldn’t have made a difference in preventing the scam. She felt these excuses ultimately misled the Ombudsman’s decision. As a financial service professional, HSBC should have performed with appropriate manner in accordance with the financial service regulations. In this case, she feels the bank ought to learn from lessons, instead of finding excuses to avoid responsibility.
- HSBC made an error about the date she reported the scam, and instantly denied responsibility even before contacting the fraudster’s bank in Hong Kong. This had an impact on the Ombudsman’s decision.
- She has concerns about misconduct on HSBC’s part and would like the Ombudsman to look at the bank, as well as their standards of morality in respect of customer care.
- HSBC was negligent in processing the payments, and subsequently made errors with the recovery of lost funds.

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 have considered Miss L’s response to my provisional decision. Most of the points Miss L has raised – have already been taken into account when reaching my decision. For example – I acknowledged the (international) payments were unusual and I don’t doubt she kept excellent credibility on her account. I also acknowledged her personal circumstances and why I didn’t think she wasn’t capable of taking steps to protect herself from fraud.

I think it’s also worth adding that this service was set up to consider individual complaints, so it’s not the role of the Financial Ombudsman Service to make findings about a business’s wider practices or processes – that is something for the regulator, the Financial Conduct Authority (FCA) to do, and they have the power to fine and punish businesses where appropriate.

My role is to look at individual complaints and when a business does something wrong or makes a mistake that causes a consumer a financial loss, I’d expect the business to put it right by putting the consumer in the position they would be in if that error hadn’t taken place. Sometimes – a bank error wouldn’t have made a difference in the circumstances – which I believe is the case here for any errors made in attempts at recovery of funds and errors in the incorrect reporting date. I have explained this in more detail below.

Taking into account Miss L's comments, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to partly uphold this complaint. For completeness, I have set this out below – and have addressed any further relevant points within my decision.

Should HSBC have prevented the payments from being made?

There's no dispute here Miss L fell victim to a scam, but there is no automatic right to a refund for victims of fraud. In fact, the relevant regulations (and the terms of her account) make Miss L responsible for payments she's made herself in the first instance. In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Miss L authorised the payments.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, 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.

The Banking Protocol mentioned by Miss L is not relevant here as this only applies to branch-based transactions.

What can be considered unusual or uncharacteristic activity clearly requires reference to common activity on the account. So, I've looked back at the account statements as far as September 2019. But there were no transfers of this nature during this time. Most of the previous activity on Miss L's current account in the 15-month period before the scam related to small debits and some cash withdrawals – the largest withdrawal being £300. What was unusual here was Miss L had previously not made such a large single payment to a new payee by faster payment or an international payment.

In my opinion, the payment for £10,000 was a payment instruction that HSBC ought to have realised warranted additional checks before it simply processed it without question. I think in a situation like this HSBC should have spoken with Miss L to check everything was in order, to protect her from the risk of financial harm. I have therefore thought about what most likely would have happened if HSBC had spoken appropriately to Miss L about her instruction for the £10,000 payment on 18 December 2020, before it executed it.

In doing so I have considered the later conversation HSBC had with Miss L on the 22 December 2020 when she made the second £25,000 transaction. I do think this is the closest indication I have of the likely direction of a hypothetical conversation four days earlier.

As a financial services professional, I think HSBC would have been aware at the time that fraudsters impersonate family and friends. Miss L voluntarily told the call handler she was urgently paying a family friend. I think the call handler could have probed Miss L further about her friend and what the money was for. I do understand HSBC's comments about how it would have been difficult for Miss L (or the bank) to verify her friend, but I do think it could have done much more to bring to life what scams like this look and feel like.

HSBC says its intervention would not have made a difference. But Miss L told the bank the payment was to pay a friend urgently. I think it could have asked Miss L about her friend and his name (which didn't match the payee details). I think if HSBC had made further enquiries Miss L would have told the call handler the name of her friend and that he had contacted her over social media to borrow money for an investment. With this in mind, I think the bank could, relatively easily, have identified and warned Miss L of the possibility she was being scammed.

It could have told Miss L about potential impersonation and investment scams and point out that most scammers will try and persuade customers to pay by bank transfer like this. Scams like these are well known to banks. The bank should have helped Miss L to reflect on whether it was legitimate or not. This was something that a more experienced eye should think was potentially not quite right. I think providing further information about the hallmarks of these types of scam would have been enough to cause Miss L sufficient concern. This was a large sum of money, so I think she would have checked further and called her friend on his original phone number, as she did when she later discovered this might be scam. It seems probable that Miss L would have become suspicious and then incredulous about the scam in time and stopped the payment in its tracks. The fraud would have failed; and Miss L would not have lost £10,000 or the transactions that followed.

Could Miss L have done more to mitigate her losses?

I've thought carefully about what HSBC's obligations were, as set out above. But another key issue is whether Miss L acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Miss L should bear some responsibility by way of contributory negligence.

From the information Miss L has provided to us, it's clear that she was experiencing a particularly difficult time in her personal life when she fell victim to the scam. She says she had recently lost her mother and was self-isolating due to the pandemic.

I'm sorry to hear of all Miss L has been through. Not just in terms of this scam, but also what's happened to her prior to the scam. I've no doubt that Miss L has been through a lot and I don't doubt that her mental health has suffered as a result. And no doubt the scam has impacted her further.

I don't doubt Miss L has suffered as a result of losing her mother and the psychological impact of Covid and social isolation. But there is also evidence within the circumstances that suggest Miss L was capable of taking steps to protect herself from fraud and financial harm. That is to say there was more she might reasonably have done that would have led to the scam being uncovered.

I do agree with HSBC that there are gaps and inconsistencies here. I appreciate these events stem back some time ago and valuable supporting evidence has since been destroyed – so it is perhaps understandable Miss L can't accurately recall everything. I think by the time Miss L's friend came back to her for the second payment just four days after asking for £10,000, Miss L should have been testing the legitimacy of what she was being told. I don't think Miss L did enough to satisfy herself that the requests were genuine.

- Miss L told us her genuine friend had never asked her for money or invested money like this before - so this was an unusual request. She also told us he generally contacted her over the phone rather than via social media – so the circumstances of the initial contact were unusual. I think by the second request she ought to have reflected on what she was initially told by the scammer and questioned its legitimacy.
- Miss L doesn't seem to have asked enough about the returns or made other checks about the investment itself. She told us she did not pay attention to the details or ask much about the investment.
- For an investment to make considerable returns in a four-day period was in my view unrealistic. I consider such short term returns were so unlikely that Miss L ought reasonably to have had significant concern about the legitimacy of the opportunity and what she was being told. That, in turn, ought to have led to a greater degree of checking on her part.
- There was no cold call and Miss L would have had time between the communications to reflect on the potential investment. She wasn't, in my view, under immediate pressure to proceed with the investment.
- The payments weren't sent to Miss L's friend and although she was given explanations as to why the account name was different, I don't think the explanation was particularly persuasive and certainly warranted further checking.
- Miss L's friend had told her his business was doing well – yet he needed to borrow and keep borrowing money from her in order to make an investment. I appreciate he may have told her all his capital was tied up – but I think this should have aroused suspicion. Particularly when she went on to borrow money herself – which is something her friend could have done himself.
- It is also clear from Miss L's own testimony that at some point she realised she was being tricked but was worried she would lose what money she had already passed over. She told us *"At the time, I was trapped in by fraudster and desperate tried to borrow monies from family and friends in every possible way to meet his demands, because I was in fear that I would lose even more if I had refused him."*

Miss L went ahead and made the payments despite all of these red flags. I'm conscious that it doesn't feel entirely fair to hold HSBC liable for the entire loss in this case. That loss has resulted after Miss L transferred a considerable amount of money without checking anything further or verifying the information she was given. I think if she had, it would've shown inconsistencies and issues in the information she was provided with. On that basis, I think it's reasonable for Miss L to share the responsibility with HSBC and reduce the refund from the second transaction onwards by 50%. I have considered Miss L's arguments that she should only be responsible for 20% but I find it fairest for Miss L to share 50% of the responsibility with HSBC.

Recovery

In this case the funds were transferred to an international bank account. Although it is part of the HSBC group - international banks aren't bound by the same rules and regulations as banks within the UK. HSBC contacted the receiving bank and asked for the funds to be returned to Miss L. But HSBC is reliant upon the international bank choosing to return funds. It can't require or force them to and unfortunately no funds have been returned.

From what I've seen, although HSBC made some errors with payment traces was late sending messages on some occasions and didn't follow up on other occasions, I don't think this would have made a difference here as ultimately - the beneficiary bank requires debit authority from the beneficiary to get the funds back. In addition, the first scam payment was made on 18 December 2020 and the last on 8 January 2021. In my provisional decision I made an error regarding the reporting date of the scam - saying it was 1 March 2022 - when in fact the scam was reported on 18 February 2020. However, I don't think this makes a difference here - as it was still almost six weeks after the last payment. I understand that Miss L didn't know she was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful as scammers usually remove funds within hours.

Overall, while I think HSBC ought to have done more and should have realised Miss L was falling victim to a scam, I don't think it would be fair to say it should refund the entire amount transferred.

I realise my decision will be a disappointment to Miss L - particularly as it differs in some respects to the investigator's findings. I do accept she has fallen victim to what can only be described as a cruel and callous scam. But I'm only considering whether the bank, which had no involvement in the scam itself, should be held fully responsible for what happened. I'm sorry she has lost money and I can understand why she would like to be compensated for all of her losses. However, despite my natural sympathy for the situation she finds herself in ultimately, I don't think it would be fair and reasonable for HSBC to refund her entire loss.

Putting things right

In the circumstances, I am satisfied HSBC should fairly and reasonably reimburse Miss L for the loss she suffered with 50% reduction from the second transaction onwards along with interest.

Money for each transaction appears to have been primarily funded by various savings accounts – a fair rate would reflect the originating savings account rate.

- Refund 100% of the first transaction of £10,000 along with interest at the originating saving account rate.
- Refund 50% of the second to fourth transactions (so 50% of £25,000, £17,000 and £17,000) along with interest at the originating account rates from the date of each transaction to the date of settlement.

Regarding the last transaction of £12,000 - £11,200 appears to have been funded by a loan (although the total loan was £11,250) and the remaining funds were Miss L's own. This isn't straight forward because Miss L borrowed the money (and used all but £50 to fund the scam). However, I've set out below what I think is broadly a fair and reasonable approach.

- Refund 50% of her own funds, totaling £400 along with interest at the originating savings account rate from the date of the transaction to the date of settlement.
- Refund 50% of the total loan repayments Miss L has made towards the loan, adding interest at the rate of 8% simple per annum to each repayment from the date it was made to the date of settlement.
- Write off 50% of the remaining balance on the loan (make arrangements with the third-party loan provider or pay Miss L the equivalent so she can do so).
- Amend Miss L's credit file to reflect the above.

My final decision

For the reasons above, my final decision is I uphold the complaint in part. HSBC UK Bank Plc should put things right for Miss L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 15 September 2022.

Kathryn Milne
Ombudsman