

The complaint

Miss S complains that HSBC UK Bank Plc has declined to reimburse the money she's lost to a scam.

What's happened?

Miss S has fallen victim to a cryptocurrency investment scam. She says that a man befriended her on a popular social media platform, and, after a while, he suggested that she invest in a company which I'll refer to as ('A'), with his assistance. Between 23 August and 9 September 2021, Miss S made:

- 5 debit card payments from her HSBC current account to a cryptocurrency trading account held in her name – totalling £3,314.90.
- 16 internal transfers from her HSBC ISA to her HSBC current account – totalling £76,455.50.
- 20 faster payments from her HSBC current account to an account she held with a third-party bank which I'll refer to as ('M') – totalling £78,305.00.
- 21 debit card payments from her account held with M to a cryptocurrency trading account held in her name – totalling £78,340.00.

All of the money paid into her cryptocurrency trading account was 'invested' with A.

I've set out the relevant transactions on Miss S' HSBC accounts in the table below.

Date of transaction	Type of transaction	Amount of transaction
20 August 2021	Debit card payment to cryptocurrency trading account	£200.00
22 August 2021	Debit card payment to cryptocurrency trading account	£1,000.00
23 August 2021	Transfer from HSBC ISA to HSBC current account	£225.50
23 August 2021	Transfer from HSBC ISA to HSBC current account	£ 10,000.00
23 August 2021	Transfer from HSBC ISA to HSBC current account	£10,000.00
23 August 2021	Faster payment to Miss S' account held with M	£5,000.00
23 August 2021	Faster payment to Miss S' account held with M	£5,000.00
23 August 2021	Debit card payment to cryptocurrency trading account	£1,400.00
24 August 2021	Faster payment to Miss S' account held with M	£3,000.00

24 August 2021	Faster payment to Miss S' account held with M	£5,000.00
25 August 2021	Transfer from HSBC ISA to HSBC current account	£4,000.00
25 August 2021	Faster payment to Miss S' account held with M	£4,000.00
26 August 2021	Transfer from HSBC ISA to HSBC current account	£6,000.00
26 August 2021	Faster payment to Miss S' account held with M	£5,000.00
26 August 2021	Faster payment to Miss S' account held with M	£5,000.00
27 August 2021	Transfer from HSBC ISA to HSBC current account	£5,000.00
27 August 2021	Transfer from HSBC ISA to HSBC current account	£5,000.00
27 August 2021	Faster payment to Miss S' account held with M	£5,000.00
27 August 2021	Faster payment to Miss S' account held with M	£5,000.00
28 August 2021	Transfer from HSBC ISA to HSBC current account	£5,000.00
28 August 2021	Transfer from HSBC ISA to HSBC current account	£5,000.00
28 August 2021	Faster payment to Miss S' account held with M	£5,000.00
28 August 2021	Faster payment to Miss S' account held with M	£5,000.00
29 August 2021	Transfer from HSBC ISA to HSBC current account	£400.00
29 August 2021	Transfer from HSBC ISA to HSBC current account	£5,000.00
29 August 2021	Transfer from HSBC ISA to HSBC current account	£4,495.00
29 August 2021	Faster payment to Miss S' account held with M	£455.00
29 August 2021	Faster payment to Miss S' account held with M	£15.00
29 August 2021	Faster payment to Miss S' account held with M	£5,000.00
29 August 2021	Faster payment to Miss S' account held with M	£4,495.00
30 August 2021	Transfer from HSBC ISA to HSBC current account	£1,250.00
30 August 2021	Transfer from HSBC ISA to HSBC current account	£8,745.00
30 August 2021	Faster payment to Miss S' account held with M	£8,745.00
30 August 2021	Faster payment to Miss S' account held with M	£1,250.00
30 August 2021	Faster payment to Miss S' account held with M	£5.00
2 September 2021	Transfer from HSBC ISA to HSBC current account	£340.00

2 September 2021	Faster payment to Miss S' account held with M	£340.00
4 September 2021	Transfer from HSBC ISA to HSBC current account	£6,000.00
4 September 2021	Faster payment to Miss S' account held with M	£6,000.00
9 September 2021	Debit card payment to cryptocurrency trading account	£130.00
9 September 2021	Debit card payment to cryptocurrency trading account	£584.90

Eventually, when Miss S ran out of money, the man stopped contacting her and she realised she'd been scammed. She reported the matter to HSBC in September 2021. Miss S has said that:

- She researched A online and it looked legitimate – it had a compelling website with 24-hour online customer service.
- The man was convincing, professional and knowledgeable – he gave her no reason to doubt the investment opportunity. She was vulnerable at the time and she believed everything he said.
- She had no knowledge of these types of scams and didn't have much experience with investments.
- The first two debit card payments she made to her cryptocurrency trading account before making payments to A returned some small dividends, and this convinced her of the legitimacy of the investment opportunity.
- It was unusual for her to transfer large amounts of money out of her HSBC accounts in a short timeframe and/or to drain her accounts.
- She wouldn't have proceeded to make the relevant payments if HSBC had told her it was likely she was being scammed.

HSBC instigated chargebacks for the two debit card payments Miss S made on 9 September 2021, which have not been successful, and it has declined to reimburse any of the money Miss S has lost to the scam. HSBC has said that:

- None of the faster payments to Miss S' account held with M triggered its fraud detection systems because they were made to a known payee and looked like normal transactions.
- There was no adverse information recorded against A at the time. So, even if it had intervened, it's unlikely that it would've been in a position to prevent the scam.
- The faster payments all went to an account held in Miss S' own name, so there was no loss in this respect.
- The faster payments were transferred from Miss S' account with M into a cryptocurrency trading account in her own name, held with a well-known investment platform. So, there's no reason to believe that an intervention would have had a material impact on preventing the scam.

Miss S wasn't happy that HSBC had declined to reimburse her, so she referred a complaint about HSBC to this Service.

Our investigator considered all of the evidence and upheld Miss S' complaint in part. In summary, they said that:

- Miss S ought reasonably to have done more to protect herself from financial harm in the circumstances, so she should bear the responsibility for 50% of her loss.
- The activity on Miss S' HSBC accounts was unusual enough from 23 August 2021 that the bank ought reasonably to have been concerned and intervened to ensure that Miss S wasn't at risk of financial harm.
- If HSBC had intervened, the scam would probably have been uncovered.
- HSBC should refund 50% of the debit card transactions to Miss S' cryptocurrency trading account from and including the £1,400 payment made on 23 August 2021.
- M could also have intervened and uncovered the scam, so HSBC should share responsibility for the remaining 50% of Miss S' loss on money that passed through both accounts (the faster payments) with M.
- HSBC should refund 25% of the faster payments to Miss S' account held with M from and including the first £5,000 payment made on 23 August 2021.

HSBC didn't challenge our investigator's finding that it should refund 50% of the debit card payments to Miss S' cryptocurrency trading account from and including the £1,400 payment made on 23 August 2021. But it didn't agree with our investigator's conclusions in terms of the faster payments to Miss S' account held with M. It said that:

- Customers commonly move funds between their own accounts, and this shouldn't routinely be seen as suspicious behaviour.
- The faster payments went to an account held in Miss S' name with another regulated firm, and they didn't go to a new payee. It's not realistic to expect it to have queried them. But, even if it had, it's unlikely it would've disturbed the scam.
- The faster payments all went to an account held in Miss S' own name, so there was no loss.

Miss S' complaint has now been passed to me for 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.

When considering what is fair and reasonable, I'm required to take into account; relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's common ground that Miss S authorised the debit card payments and faster payments. She made the payments using the debit card linked to her HSBC current account and online banking and, even though she was the victim of a scam, and she didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. So, the starting point is that HSBC had an obligation to follow Miss S' payment instructions, and Miss S is presumed liable for her loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should make additional checks before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. I consider 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.
- 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 (amongst 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 its customers from the possibility of financial harm.

Considering the relatively low values of the debit card payments Miss S made to her cryptocurrency trading account on 20 and 22 August 2021, the payment details and Miss S' prior account activity, I don't think it's reasonable to expect HSBC's fraud detection systems to have been triggered by them. So, I don't think HSBC could've done more to prevent these particular losses, and it wouldn't be fair or reasonable to require HSBC to refund the payments.

I've thought carefully about what HSBC has said in terms of the other payments made as part of this scam and, to an extent, I accept its arguments. In general, I don't think it's realistic or reasonable to expect a bank to intervene with all high value and/or unusual payments made to known payees in isolation. But it should have been on the lookout for signs that customers were at risk of fraud, not just for unusual transactions.

I've looked at Miss S' account statements in the six months leading up to the scam and I think that the activity on her accounts as a whole between 23 August and 9 September 2021 ought reasonably to have caused HSBC some concern. Before the scam, Miss S' current account was used modestly – in the main, she made very low value payments out of her current account (rarely making payments of more than £100 and never making payments of more than £500). She was a regular saver and she rarely transferred her savings into her current account for general use. But, from 23 August 2021, there was a flurry of activity on Miss S' accounts. In a short timeframe, her ISA was drained of a substantial savings pot following lots of transfers into her current account, and there were lots of high-value payments out of the current account (albeit to a known payee). Additionally, there were very few transactions occurring on the current account that matched with normal activity. Overall, I think the activity on Miss S' accounts from 23 August 2021 looks unusual, very suspicious and is indicative of fraud. I consider it reasonable to expect HSBC to have intervened in the circumstances, to ensure that Miss S did not come to financial harm.

HSBC has argued that the faster payments Miss S made went to her own account held with M before being transferred to her own cryptocurrency trading account. So, the loss didn't occur on her HSBC accounts. But cryptocurrency scams often involve money passing through more than one account and they were not uncommon at the time. I think HSBC would've been aware of this. The Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. By mid-2021, when the scam Miss S fell victim to started, I think HSBC ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, although Miss S' losses may not have arisen from the initial transfers, I'm satisfied they ought to have been within the contemplation of, and foreseeable to, HSBC. And I'm satisfied that HSBC can be held responsible for the losses if it could have prevented the scam by asking Miss S some further questions about the payments.

It doesn't appear that Miss S was coached by the fraudster, as is often the case with scams, so I think she would've spoken freely if HSBC had asked her some questions about the inter-account transfers and payments she was making on or around 23 August 2021. And I think it would most likely have become apparent that she was being scammed.

By August 2021, I think HSBC had or ought to have had a good enough understanding of

how cryptocurrency investment scams work – including that customers often move money to an account/s in their own name before it is moved on to a fraudster – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think HSBC ought to have asked Miss S some probing questions and given her information regarding the prevalence and typical features of cryptocurrency investment scams before processing the first £5,000 faster payment out of the current account instructed on 23 August 2021. Miss S has said she had no concerns about investing with A because it had a compelling website and she had no reason to doubt the fraudster, and that's what she may have said if HSBC had questioned her. But I don't think the conversation should've stopped there. HSBC could've asked more questions in order to determine whether the typical features of cryptocurrency scams were present here (and I think they were – Miss S was 'investing' in A according to the advice she'd received from a stranger that had contacted her via a social media platform and she was passing money through other accounts in her own name before sending money to A). And it could have provided meaningful advice about cryptocurrency investment scams.

If HSBC had done enough, I think it would most likely have been obvious to the bank and Miss S that there was a risk of financial harm, and the scam would've unfolded without any of the payments instructed from and including 23 August 2021 being made. Of course, HSBC could also have declined to make the payments instructed altogether based on the information it had received if Miss S still wanted to go ahead with them despite its warnings and, given the circumstances here, I think it would've been reasonable for it to do so.

I appreciate that HSBC needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests and I wouldn't have expected it to interrogate Miss S. I also acknowledge that the main perpetrator here is the fraudster. But overall, I think appropriate questions should reasonably have been asked in this case on or around 23 August 2021, and if they had been Miss S wouldn't have wanted to go ahead with 'investing' with A, the scam would have unravelled and Miss S wouldn't have lost her money.

HSBC hasn't challenged our investigator's recommendation to refund the debit card payments Miss S made to her cryptocurrency trading account from and including 23 August 2021, and I think that's a fair position. Considering everything, I think HSBC could've prevented these payments if it had intervened appropriately.

I've had the benefit of reviewing the evidence presented in Miss S' similar case against M, and I think it could've done more to unravel the scam and prevent the loss of funds that passed through the account Miss S held with it too (the faster payments). So, overall, I think it's fair for HSBC and M to share responsibility for these losses, and I have taken a slightly different approach to redress than I might normally take considering the individual circumstances of this case.

Finally, I've thought about whether Miss S should bear some responsibility by way of contributory negligence. In the circumstances, I think she should bear 50% of the loss she incurred from and including 23 August 2021. I say this because Miss S has said that the man she met was convincing, professional and knowledgeable, he gave her no reason to doubt the investment opportunity and, as she was vulnerable at the time, she believed everything he said. She's also said that she looked at A's website and it appeared legitimate. But she doesn't seem to have taken any steps to independently verify the legitimacy of the investment opportunity before paying over large sums of money. I appreciate that she received some small returns from the first two debit card payments she made to her cryptocurrency trading account before making payments to A, and that she's said this convinced her of the legitimacy of the investment opportunity. But, overall, I don't think she did enough to protect herself from financial harm in this case.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct HSBC UK Bank Plc to:

- Reimburse 50% of the debit card payments Miss S made to her cryptocurrency trading account from and including 23 August 2021.
- Reimburse 25% of the faster payments Miss S made to her account held with M from and including 23 August 2021.
- Pay interest from the date of each payment to the date of settlement (at Miss S' ISA rate on any money that was transferred out of the ISA into her current account before being moved on, and at a rate of 8% simple per annum on any funds that were held in the current account prior to the scam).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 9 August 2022.

Kyley Hanson
Ombudsman