

The complaint

Miss T complains that HSBC UK Bank Plc (HSBC) won't refund a payment she made after falling victim to a scam.

What happened

In 2018, Miss T's brother introduced her to a work colleague of his, who she was told was good on the stock market. I'll refer to the work colleague as B. Miss T says B had been investing for other work colleagues and made money for them. However, B was no longer doing the investing and instead was using a firm called S. Miss T was told that B had invested with S previously and received returns.

Miss T says, as she trusted B, she didn't do her own due diligence. However, she did an online search for the directors of S and found articles which described the directors as highly reputable and highly regarded within the financial sector. Miss T says the directors were portrayed as market leaders, experts in their field and extremely successful wealth management consultants. Miss T says the information she found supported what B had told her.

Miss T signed a funding agreement with S, which said Miss T was in effect providing a loan to S. For her loaning them £100,000, Miss T would receive a monthly interest payment of £1,250. Miss T says she was told that 20% of her £100,000 would be used for Forex trading by S, with the remaining 80% of the payment held in a bank account – which would be secured in a similar nature to the Financial Services Compensation Scheme (FSCS) protection which is provided in the UK on deposits of up to £85,000. Miss T was told that S expected to generate the value of her monthly interest payment from their Forex Trading.

On 15 February 2018, Miss T made an international payment to S for £100,000.

When Miss T didn't receive her first interest payment, she contacted S and was told it was due to a glitch. Miss T received the payment approximately a month later, but this was the only payment that Miss T received from S.

Miss T has provided the following information about S and the beneficiary bank S held their account with:

- In September 2018, the beneficiary bank was taken under the control of the Danish financial regulator. An article says the beneficiary bank was engaged in serious violations of financial regulation in a number of areas from September 2015 to September 2018.
- In March 2019, a cease and desist order was issued against the directors of S. Later the same month liquidation proceedings commenced against S.
- In April 2019, Miss T completed a claims submission in relation to the liquidation setting out what she was owed by S – which included the loan capital of £100,000 and missed interest payments.

- In July 2019, Miss T received a letter from the mandated liquidator of S. This letter said it was hard to understand why S had collapsed and suggested the “business construct distinctly appears to be a ponzi scheme”.
- In September 2019, the beneficiary bank was charged with money laundering.
- In October 2019, Miss T received a follow up letter from the mandated liquidator. This letter told Miss T that the liquidator didn’t understand how S had lost so much of their investors’ money in FX trading. But, that one of the directors was denying using the money for his own purposes and that the liquidator had no evidence to support he had.
- Later in October 2019, S was discontinued due to “lack of assets”.
- Miss T and other investors initially approached S directly because they weren’t getting the promised returns/interest payments. Miss T says they didn’t report S at that time because S offered a recovery scheme, however she now believes this was just a delay tactic.
- Based on her investigation she believes the beneficiary bank was owned and operated by an organized gang and was laundering money. Also, that the Danish financial regulator had concerns as early as 2012 about the beneficiary bank, yet they allowed them to continue operating until September 2018.

As she hadn’t received any funds back from S, Miss T raised a fraud claim with HSBC in 2021 and asked them to refund the money she’d lost to the scam. Miss T felt HSBC should’ve known about the irregularities of the beneficiary bank and prevented her from making the payment to an account held with them. Also, that since sending these funds, she’s been warned by HSBC against sending further funds to that same beneficiary bank. Miss T also believes that HSBC should’ve asked her questions while in the branch making the payment, and that if they had, it would’ve prevented her from falling victim to the scam.

HSBC declined to refund Miss T saying they’d conducted fraud detection checks when she made the payment but had no reason not to process her payment instruction. They also felt it was unclear if Miss T had been the victim of a scam, saying that it appeared S was a genuine company that had financially failed.

Miss T wasn’t happy with HSBC’s response, so she brought a complaint to our service.

An investigator looked into Miss T’s complaint but didn’t uphold it. In summary, they said it was unclear whether or not she had been the victim of a scam, as it appeared that S had financially failed. But whether it was a scam or not, they couldn’t fairly ask HSBC to refund Miss T. The investigator said there was nothing to suggest that HSBC were aware of any concerns around the beneficiary bank, and that even if HSBC had questioned Miss T about the payment – it was unlikely HSBC would’ve had any concerns based on Miss T being recommended the investment by a trusted third party and the positive reviews she’d seen online. The investigator acknowledged that HSBC hadn’t tried to recover the funds for Miss T from the beneficiary bank because they didn’t consider the situation a scam, however, even if they had they wouldn’t have been able to get any funds back for Miss T.

HSBC agreed with the investigator’s opinion, however Miss T disagreed. Miss T responded saying:

- The liquidator states his belief that it was a ponzi scheme, but in order to prove it would require the investigators to pay for a formal investigation – which they can’t afford to do because of their losses.

- If HSBC had asked questions about the payment, it's unlikely she would've continued to make the payment. Miss T highlighted that she doesn't have the knowledge of a banking professional, and as the professional, HSBC should've raised serious concerns with her – which would've prevented her from making the payment. Miss T also thinks she wouldn't have been able to successfully appease the concerns HSBC would've raised which would've resulted in the payment not being made.
- At the time of making the payment, Miss T was particularly vulnerable due to her personal circumstances, as such if HSBC had challenged her decision to invest – she wouldn't have been able to cope and wouldn't have proceeded with the payment.
- That any questions about the investment, would've discovered what Miss T was told about 80% of her funds were being protected – which wasn't true. And, any indication from HSBC that her money might be at risk, would've prevented Miss T from making the payment as she never would've taken a risk with the funds, as they came from an inheritance.

As Miss T didn't agree with the investigator's opinion, the case was passed to me to review.

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.

Having done so I've reached the same outcome as the investigator and for the same reasons.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, there is an obligation on HSBC to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears unusual and out of character. In situations when potential fraud is identified, I would expect HSBC to intervene and attempt to prevent losses for the customer.

Should HSBC have prevented Miss T from making the payment?

In this case, Miss T made a payment of £100,000 which was done in branch with the help of branch staff. I'm satisfied that there is enough about this payment that makes it unusual and out of character, whereby HSBC should've been concerned and asked Miss T some questions in order to satisfy themselves she wasn't at risk of financial harm.

The type of questions that I would expect HSBC to have asked would include: what was the purpose of the payment, how Miss T had found the investment (for example was she cold called), what research had she done or what did she know about S, what sort of return was she being promised and whether she had checked the Financial Conduct Authority's (FCA's) website to see if S were regulated or there were any warnings.

I wouldn't expect HSBC to have interrogated Miss T, or to have done research on the investment or scrutinised the contract/agreement in the depth that I believe Miss T expects. And, while I appreciate Miss T's point that HSBC are the professionals, there is a limit to the knowledge and research that I would expect of the branch staff. Generally, I would expect them to be listening out for any of the usual scam warning signs which might include a rate of return that is too good to be true, the name of the investment company if it's one that they know has been cloned by fraudsters, a lack of research completed by the consumer to

ensure the investment is legitimate, a lack of understanding about the investment by the customer, or situations where a customer has been contacted out of the blue with an investment opportunity.

There are no set questions that I can fairly say HSBC should've asked as it will vary depending on the discussion they're having with their customer, as well as the information they're being given in the response to questions. But the questions I've suggested above are basic questions that, in the circumstances of this case, I think it would've been reasonable for HSBC to have asked.

Where it's not clear exactly what happened, or when there is a lack of evidence or incomplete evidence, I only have to reach my decision based on what I think is most likely having weighed up all the evidence. In this case, that means deciding what is likely to have been the outcome if those questions had been asked and whether it would've meant the payment wasn't made.

Based on the information Miss T gave us I'm not persuaded that a discussion with HSBC would've prevented the payment being made for the following reasons:

- Miss T was recommended the investment by someone her brother knew, and more importantly trusted. Miss T says that B had been investing for other work colleagues and made money for them, and that B had invested with S previously and received returns. Miss T has said that she did limited checks because she trusted B. I think it would've been reassuring to HSBC that Miss T was recommended the investment by B (especially as they were someone her brother knew) and means I wouldn't expect HSBC to have recommended Miss T seek independent advice on the investment before proceeding with the payment.
- Miss T had done some research on the directors of S and found only positive articles which reinforced her belief that this was a genuine investment. I think the checks Miss T had done, the information she found and the fact that she didn't find any warnings or bad reviews about S would also have reassured HSBC that this was a legitimate investment.
- The fact that S weren't authorised by the FCA, isn't in this case a reason for HSBC not to have proceeded with the payment. S wasn't based in the UK so wouldn't be regulated by the FCA. But, there also weren't any warnings on the FCA's website which is often the case with cloned investment firms or firms operating in the UK without authorisation. So, any checks done on the FCA website for S wouldn't have caused concern for HSBC. Also, S was regulated in their country of origin which would've provided some reassurance for HSBC about their legitimacy. And, while Miss T has said that the Danish regulator had concerns about S prior to her making her payment – I haven't been able to find anything online that supports this which would've been available if a search was done at the time of the payment. All of the articles that Miss T has given us were produced or posted after her payment. And while some of the articles suggest there were earlier issues with the beneficiary bank and S, I can't see that this was actually documented and available for anyone doing checks in February 2018.
- The return that Miss T was being offered wasn't so high, whereby I feel HSBC should've been concerned. The return in the agreement was 1.25% per month, which is high. However, Miss T was making a loan to the company rather than making a standard investment. But, more importantly, Miss T says that B had been making money for other people and had himself been using S and made returns. I think in these circumstances, that Miss T would've had confidence that if B had received returns from S, that this return was achievable. And I think it's most likely that the

recommendation would've provided some reassurance to HSBC too.

So, having thought about the type of questions I would've expected HSBC to ask, and the answers I think Miss T would've given – I'm not persuaded that HSBC should've been concerned that Miss T was at risk of financial harm. On that basis, I'm not persuaded that HSBC acted unreasonably in following Miss T's payment instruction and I wouldn't have expected them to prevent the payment.

Miss T says she was particularly vulnerable at the time of making the payment, and that if HSBC had challenged her or suggested that her funds would be at risk – she wouldn't have gone ahead with the payment. But, as I've set out above, I'm not satisfied that the questions HSBC would've asked, would've caused them concern, so I can't fairly say they should've challenged Miss T. I would only expect a challenge to happen where the bank identified concerning information – which isn't the case here.

Miss T also feels HSBC should've known that the beneficiary bank (whom S banked with) was involved in inappropriate practices and therefore prevented her from making a payment to them. But I haven't seen anything that suggests HSBC was on notice, or had been issued a warning, not to deal with that bank. Usually the UK regulator would provide banks with warnings about overseas banks they should no longer use or transact with. I wouldn't expect HSBC to do their own independent checks on individual beneficiary banks. So, while Miss T may think HSBC should've had concerns about the beneficiary bank, I'm not satisfied that this was the case or that HSBC had any knowledge of issues with the beneficiary bank that meant they shouldn't have processed her payment.

Also, Miss T says HSBC should've realised that the information she was given about how her funds would be used by S was unusual and should've caused concern. Part of which was the information she was given about 80% of her payment being held by S in an overseas bank account that provided protection similar to the scheme the FSCS provides in the UK. However, I'm not persuaded that all of this information would've been provided as part of the questions I would have expected HSBC to ask. Also, I'm not persuaded that I can fairly expect the branch staff to have gone into the intricate details of the funding agreement Miss T had entered into, or have sufficient knowledge to tell Miss T whether or not a overseas regulated business could offer this protection.

I think that if Miss T had been cold called and hadn't been recommended this investment then the discussion about the type of investment might've been more detailed. But, in these circumstances where Miss T would've told HSBC that the investment was recommended by a trusted work colleague of her brothers who had invested with the same company and had returns – I'm not satisfied that HSBC should've obtained this level of detail about the investment. Or, if HSBC were given that level of detail about the investment, shouldn't have followed Miss T's payment instructions based on the research she'd done and the recommendation she'd been given.

Having considered everything very carefully, I'm not persuaded that HSBC acted unreasonably in processing Miss T's payment and can't fairly ask them to refund Miss T.

Should HSBC refund for any other reason?

It's worth noting that even if this wasn't a scam, then I still wouldn't ask HSBC to refund Miss T. I say this because HSBC is only required to be on the look-out for signs of potential financial harm in relation to customers falling victim to a scam. Where a customer, in this case Miss T, is making a payment as part of a legitimate investment outside of the products HSBC offer themselves – HSBC has no obligation to identify potentially risky or unusual

investments or to refund Miss T if an investment firm financially folds or the investment falls through or turns out not to provide the expected returns.

Also, I'm aware that HSBC didn't contact the beneficiary bank to try and recover the funds when Miss T raised her fraud claim in 2021. But by 2021, S had already gone into liquidation, so no funds would've been recoverable if HSBC had contacted the beneficiary bank. So, I can't fairly say that HSBC could've done more to try and recover Miss T's funds.

I appreciate that Miss T is going to be very upset, but I can't fairly ask HSBC to refund her.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 30 August 2022.

Lisa Lowe
Ombudsman