

The complaint

Miss L complains that HSBC UK Bank Plc won't reimburse funds she lost when she fell victim to a scam.

What happened

Miss L saw an advert for an investment business 'Duxa Capital' on a social media platform. The investment was being endorsed by celebrities. Miss L says she went to its website which looked professional and carried out some basic searches about the business online but didn't come across any negative reviews.

She made a number of investments and says initially Duxa was very responsive and it allowed her to make a withdrawal. However, as time went on, and Miss L wanted to make further withdrawals it became distant until it stopped replying altogether. It was at this point Miss L did more research and came across warnings and negative reviews and realised she'd been scammed. The money paid to Miss L was made up of her own money, money borrowed from family and from HSBC.

The transactions were as set out below:

Date	Merchant	Amount	Payment type
28 February 2020	Nextpayway.com	£213.57	Debit card
02 March 2020	HQ*frdpay2 Mosk va	£2,184.84	Debit card
04 March 2020	Royal-Coins.net	£500	Debit card
04 March 2020	Royal-Coins.net	£5,000	Debit card
05 March 2020	Royal-Coins.net	£5,000	Debit card
12 March 2020	PPK5 Mosk va	£2,233.30	Debit card
13 March 2020	Royal-Coins.net	£7,500	Debit card
13 March 2020	Phoenix Payment Ltd	£7,600	International transfer
14 March 2020	Royal-Coins.net	£7,500	Debit card
Total		£37,731.71	

On 10 March 2020, Miss L made a successful withdrawal from her investment of £752.67, so her loss is £36,979.04. In addition to this Miss L also incurred some foreign transaction fees in relation to some of these transactions.

Miss L complained, but other than delays in its complaint handling for which it paid £100 compensation, HSBC didn't think it had done anything wrong. Our investigator considered the complaint and upheld it. Although the initial payments weren't so unusual, she found the fourth payment – that of £5,000 made on 4 March – ought to have triggered HSBC's fraud alert systems, as it was unusual and uncharacteristic for the spending on Miss L's account. And she was satisfied that had HSBC intervened the scam would likely have unravelled. She also considered whether Miss L had contributed to her loss but found she hadn't.

HSBC disagreed with the outcome reached. In summary it said:

- It doesn't appear Miss L carried out any research into the merchant or industry before investing, yet she parted with over £37,000 which demonstrates a willingness to take risks with her money.
- As Miss L acknowledged, she was contacted about some payments because of the amounts, which she approved. It doesn't accept it was required to intervene from the fourth payment.
- It doesn't consider any intervention by it would have unravelled the scam.
- Contributory negligence is only considered briefly within the opinion. Miss L paid a large sum of money out without taking any steps to satisfy herself it was a legitimate investment opportunity. It considers this a clear example of contributory negligence.
- Its unhappy 8% interest has been applied to the refund as Miss L didn't borrow to make the payments and her account remained in credit throughout.

On allocation to me I noted that Miss L had taken out two loans through HSBC just prior to some of the investments being made. And she had received large sums from individuals which were also invested. I arranged for enquiries to be made about the loans, the other money and what research Miss L had carried out before investing (already noted above).

HSBC indicated that Miss L had applied for two loans, £5,000 on 3 March 2020 and £10,000 on 4 March 2020. Its records show that Miss L told it the loan purposes was to buy a new motor vehicle. However, it also said both of these applications were rejected.

Miss L told us she told the bank the borrowing was for personal or investment reasons. And she is still in the process of repaying HSBC's loan. She borrowed other money from family but didn't explain to them the investment she was making; and she says she will be repaying that after she has finished her loan with HSBC.

I issued my provisional decision on 21 July 2022 explaining why I was minded to uphold Miss L's complaint but that I was also minded to reduce compensation by 50% as I found she was equally responsible for her losses.

Miss L has confirmed she has nothing further to add. HSBC said that although it didn't agree with everything said, it would agree to my recommendation as a gesture of goodwill and without admission of liability.

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 provided any further evidence or arguments for me to consider, I see no reason to depart from my provisional findings. I therefore finalise them below. Suffice to say, HSBC's time to make a goodwill gesture without admission of liability has passed. As my

findings show, I have found it equally responsible for Miss L's losses and so require it to compensate Miss L accordingly.

Under regulations, and in accordance with general banking terms and conditions, banks and building societies should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result. HSBC is aware of our general approach to its safeguarding and due diligence duties to protect customers.

The payments made by Miss L were made using her debit card and by an international transfer. I therefore conclude these were authorised payments – for which Miss L is liable, unless there is evidence HSBC could and should have done more to protect her, which issue I now turn to.

There doesn't appear to be any dispute Miss L has fallen victim to a scam. The FCA published a warning about Duxa Capital just a matter of days before Miss L made her first payment.

Miss L made a number of payments. But none of them went directly to Duxa Capital. Rather it appears Miss L was making payments to different cryptocurrency exchanges. This is important as it wouldn't have been known to HSBC where the ultimate destination of the funds was, such that I think it ought to have automatically blocked the payments. It also means any chargeback attempt would likely have failed as payments went to a different party.

But I do think HSBC should have intervened. Miss L made a number of payments from her account, the majority of which were debit card payments. I agree with the investigator that the first three payments weren't unusual or uncharacteristic for the account, albeit they were international and to new payees. I therefore don't find HSBC ought to have intervened before any of those transactions completed.

However, I find the first payment of £5,000 to Royal-Coins on 4 March was a substantial increase in spending, with Miss L only exceeding her previous largest spend of £1000 a matter of days before, such that I do find it was unusual and uncharacteristic. It was also the second payment to the same merchant in one day. I'm satisfied this was so unusual that HSBC's systems ought to have triggered an alert and the payment paused, pending further intervention – such as making enquiries, or giving a scam warning.

I have considered the payments appear to have been sent to legitimate cryptocurrency exchanges. And I accept that buying cryptocurrency is a legitimate exercise. But both the FCA and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. And in May 2019 Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something regulated businesses including HSBC, ought to take notice of. So even if Miss L had been sending money to legitimate cryptocurrency exchanges, it didn't follow that her money was safe, or that she wasn't at risk of financial harm due to fraud or a scam.

Had HSBC carried out its due diligence and duties and asked Miss L about the payment, I've no reason to doubt she would have explained what she was doing. Whilst I accept it had no

duty to protect her from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure as far as is reasonably possible, that they are dealing with a legitimate person – such as checking the trader was authorised by the FCA. And it could have drawn on its own knowledge and information that was in the public domain (already referenced) about the high-risk associated with trading and the potential for fraud and provided Miss L with a potential scam warning.

It appears HSBC did intervene in some of the payments. But both parties have indicated this was purely an exercise in confirming it was Miss L making the payments. I don't know which payments these interventions related to, but given the sums involved in the payments from 4 March 2020 onwards, I don't think such a limited intervention was sufficient to ensure Miss L wasn't at risk of financial loss due to fraud or a scam. Had it done more, I'm satisfied Miss L would have looked further into the investment in general, whether the trader was regulated here or abroad and could have come across the FCA warning for herself. I'm satisfied a more meaningful intervention by HSBC would likely have exposed the scam, and caused Miss L to stop, thereby preventing any further losses. So HSBC should reimburse those losses.

But that isn't the end of the matter. I also need to consider whether Miss L ought to bear some responsibility for the situation in which she found herself. Although Miss L says she hasn't invested I note she did make regular contributions to an ISA, albeit I accept this might have been a cash ISA, which wouldn't provide much in the way of investment experience.

Miss L has also borrowed in order to invest. It isn't clear why she did that. And although HSBC says the loan applications were rejected, that doesn't appear correct given what her statements show – that the loans were derived from HSBC and that although the second loan repaid the first, I understand the second is still being repaid. That same application information also shows Miss L told HSBC the loans were to buy a new vehicle – not what she told us was the reason given for the borrowing. So it doesn't appear she was entirely honest with HSBC about why she wanted the funds and I am aware that HSBC doesn't actually provide an option to borrow for investment (I'm not aware of any bank that would lend for this purpose).

Miss L also invested a fairly substantial sum, and the sums were increasing overtime. And although she has said she carried out some research, by her own admission that was basic. However, even just searching 'Duxa Capital' ought to have flagged the warning provided by the FCA at the time. Had Miss L been more diligent in her research she would have come across information in the public domain for herself about Duxa Capital.

So I do think Mrs S ought to bear some responsibility for her losses and compensation should be reduced accordingly. Having thought about this carefully I find a reduction of 50% compensation to be appropriate. Both parties could have done more here to prevent the financial loss.

Finally, I note HSBC's comments about the 8% interest that has been awarded. As it will note from my findings, Miss L did in fact borrow to make the investment. But this is also our standard approach where someone has been caused a financial loss and has lost the use of funds. I see no reason to depart from our approach here.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I requires HSBC UK Bank Plc to:

- Reimburse 50% of Miss L's losses from the fourth payment of £5,000 inclusive of any applicable transaction fees; and
- It should add 8% simple interest per year, from the date of the payments to the date of settlement, less any lawfully deductible tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 19 September 2022.

Claire Hopkins
Ombudsman