

The complaint

Mr and Mrs R complain that HSBC UK Bank Plc hasn't reimbursed them for payments Ms R sent to an investment scam.

What happened

Ms R has explained to us she saw cryptocurrency and bitcoin investments on television and wanted to give it a go. She was contacted by someone who introduced her to a broker who seemed genuine and said she would help her get enough to pay off her mortgage and have funds to spare. Ms R has explained she sent a payment in May 2021 to open the account and then a further investment payment in mid-June 2021, all from her joint account with Mr R. At the end of June 2021 she was asked to pay taxes to release her investment and the dynamic she had with the broker changed. She received threats to do with the taxes and money laundering, and was told she had to pay certain amounts, or she could go to prison. Ms R sent three further payments as a result of this.

In September 2021, Ms R realised she'd been the victim of a scam. Ms R complained to HSBC but it didn't uphold her complaint. It said that there were no recovery options in relation to the payments, as the card payments had gone to genuine cryptocurrency firms and the international payments weren't able to be recalled at that time. And it didn't agree it had made a mistake in processing any of the payments. But it did award £75 for delays in reaching its outcome.

Ms R disagreed and brought her complaint to our service. Our investigator ultimately didn't uphold the complaint. Ms R made the first large payment towards this scam at the end of June 2021 and this was done over the phone. Our investigator thought HSBC had done enough in this call, considering Ms R wasn't honest about the reason for making the payment. After this payment she didn't think the others should trigger an intervention. And she was satisfied that there were no recovery options.

Mr and Ms R disagreed and asked for an ombudsman to review their complaint. They disagreed the call by HSBC was good enough and felt that they were due their funds back, or at least to share 50:50 responsibility with HSBC. While there were a number of factors to consider when this case first came to our service, as set out above, at this time there is one key issue left – whether or not HSBC did enough in its intervention call with Ms R. So I have focused my decision on this point.

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 appreciate Mr and Ms R and their representatives have scrutinised the call HSBC had with Ms R. Ms R has said that they have played the call to a number of people and *'everyone who knows her'* can hear the fear in her voice. And they have suggested a number of different things that could have happened in the call or questions that could've been asked. But the advisor didn't know her. They are taking this call in isolation and don't know how

Ms R normally sounds, or have the context of the scam that she's shared with others. What I have to do is consider whether what did happen in the call was reasonable considering the risk this transaction posed. And the way HSBC assesses that risk is by the information Ms R provides in the call, which we know is not honest information.

There are of course situations in a call where we may think a bank should be concerned, for example if someone is very hesitant, unable to answer questions or repeatedly changes their responses. I've listened to the call and I can't agree that Ms R fits this sort of profile. While I appreciate her family knows this isn't how she normally sounds, I don't hear anything concerning in this call. When she realises the exchange rate has changed, her and the advisor both laugh. And this happens more than once. The call sounds natural, there aren't any vocal tells in the call I think the advisor should've picked up on to say Ms R was acting under duress or out of fear.

I accept that the warning given by the advisor and the questioning they did do wasn't specific to Ms R's situation or scam. But they are expected to act on the information they receive. Ms R said she was paying a family member, so there's no suggestion she was investing to prompt this kind of warning. And while the reference she asked to include did have the name of a cryptocurrency firm, I don't think this is enough to say HSBC failed in its duty. Ms R spells this out for the advisor when she first gives it. And when the advisor reads it back it's a small part of the long reference given. So I don't think this alone is enough to say the advisor should've realised Ms R wasn't being honest about what she was doing.

I'm also aware that Ms R was coached through this phone call by the scammers and had received a number of threats from them prior to the call. So even if I was to say the advisor should have asked about the reference, which I don't consider it did need to, I don't see how this ultimately would've stopped her making this payment.

Ms R has explained the great deal of preparation she had for the call, receiving over 20 practice calls with two or three different people. So it's clear different eventualities were covered, it seems highly likely the reference would've been one of these. And she's told us she believed she would go to prison if she didn't pay the funds, so it seems there would be very little HSBC could've done to stop her, short of refusing to make the payment. Even if Ms R had explained her sister-in-law was going to invest the money, hence the reference, that wouldn't be a reason for HSBC to block the payment all together. They ought to have given some further investment scam information, but I can't see Ms R stopping at this point considering the preparation she went through for the call, and more importantly the threat of prison she says she was under.

Ms R's representative has said that HSBC could've stopped Ms R by breaking the spell that this was a genuine investment. But Ms R has later told us she said the payment was for her sister as a hint to HSBC she was being scammed. It's therefore unclear whether she was, at the time of this call, acting under duress or due to the belief this was a genuine investment. But either way, as I've explained above, I don't think HSBC has acted unfairly here, as I don't agree it would've reached a point where it should've refused to make the payment. Or where Ms R would've agreed to stop if it didn't do this.

I can understand why Ms R acted the way she did in the call, considering the situation she's described. But our role here is to make a finding about whether HSBC has done something wrong. Whether or not Ms R had a legitimate reason for being dishonest isn't the test I must apply here. HSBC could only act on what it did know at the time. And Ms R was unfortunately coached into providing a plausible explanation for sending the funds that didn't suggest she was directly paying into an investment. HSBC didn't know how vulnerable she was or about the threats she was receiving. So I can't fairly say it should now refund her because of a situation it had no idea about. And considering how Ms R has described the events, it doesn't seem HSBC would've been able to uncover the situation at the time, as Ms R was prepared for the call and felt forced to lie to conceal what was going on.

I appreciate Mr and Ms R, Ms R in particular, are going through a very difficult time following this scam. From reading their correspondence I do appreciate the impact has been devastating and has caused long term financial and health consequences. However, we are an impartial service. It would not be appropriate, and nor is it within our remit to let this impact the outcome of the case. The outcome of this complaint must be decided on the facts and what happened at the time of the scam, it cannot be influenced by emotion or decided on empathy. I know this outcome will be very difficult for Mr and Ms R and I'm sorry to have to deliver such difficult news. But I can't agree that HSBC did do something wrong in this case. I do have to weigh up the evidence we hold, even if it was received later in the case journey, and due to this, I'm not upholding this complaint.

My final decision

For the reasons set out above, I don't uphold Mr and Ms R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Ms R to accept or reject my decision before 12 January 2023.

Amy Osborne
Ombudsman