

## The complaint

Mrs C is unhappy that HSBC UK Bank Plc won't refund her money she lost as a result of an investment fraud.

## What happened

As both parties are familiar with the circumstances of this complaint, I have summarised them briefly below.

Mrs C was looking to get involved in investments. She found a business advertised on a legitimate cryptocurrency trading website that was offering good returns on cryptocurrency investments.

Mrs C contacted the business and, after registering herself with them, decided to invest. Over the course of thirteen days, Mrs C was persuaded to take out a number of loans and make several high value payments to a cryptocurrency wallet totalling £79,083.12.

Unfortunately, it later transpired that Mrs C had fallen victim to a fraud. She reported it to HSBC which looked into her claim but didn't think it should be held liable. Mrs C, unhappy with this, referred her complaint to our service for an independent review.

An Investigator considered the evidence provided by both parties, but felt HSBC should have done more. They concluded that the payments were out of character and unusual when comparing them to Mrs C's normal account activity. And they also felt HSBC missed an opportunity to intervene and break the spell of the fraud. A recommendation was made to reimburse Mrs C the money she lost including interest.

HSBC didn't agree with the Investigator's assessment or recommendations. So, the matter was passed to me for a decision. On 1 March 2023 I issued my provision findings to both parties, giving them until 15 March 2023 to respond with any further comments and evidence. My provisional findings were as follows:

*'Were the payments out character for Mrs C's account?*

*Businesses, such as HSBC, have a long-established obligation to process payments in line with its customer's instruction. But this obligation must be carefully balanced against other legal, regulatory and good practice obligations to protect its customers from fraud and financial harm, among other things. I acknowledge that this can sometimes be a difficult balance for businesses to strike.*

*In order for HSBC to fulfil these obligations, it should be on the lookout for transactions that are out of character or unusual for a customer's account. And where necessary, intervene or, in some circumstances, prevent payments from being made altogether.*

*Mrs C was using her HSBC account regularly and for day-to-day spending. The first payment made to Mrs C's cryptocurrency wallet was on 14 April 2021 for £6,000. This was closely followed by another £4,000 payment the same day. Having looked at Mrs C's bank*

*statements prior to these two payments, I find that both of these payments were out of character and unusual in comparison to her typical account activity.*

*Prior to the payment of £6,000, Mrs C hadn't made any transfers or payments from her account that were of a similar value. Other than regular small value card payments and regular Direct Debits, there are only a small number of transfers from the account, normally to regular payees, for values significantly lower than the initial £6,000. So, I find this payment does stand out and should have been deemed out of character. It presents a number of risk indicators, such as a significant increase in spending, to a new payee and being preceded by a large payment into the account from a credit provider. These are all indicators that a person may be at risk of fraud.*

*I therefore find that these payments should have been flagged by HSBC and intervention should have occurred.*

*Would intervention by HSBC have made a difference to the outcome?*

*HSBC didn't intervene in the first payment made on the account, so it is difficult to say for certain what any intervention would have meant. But there are elements of the evidence presented that persuade me intervention would have likely caused Mrs C to take a step back and consider the payments she was being requested to make.*

*Following the two payments I've highlighted above, Mrs C did attempt another £10,000 payment to her cryptocurrency wallet the same day. HSBC did stop this payment for fraud checks as it identified it as a risk. This prompted Mrs C to contact the bank and discuss the payment with a member of staff.*

*I've listened to the call between Mrs C and the HSBC representative. Mrs C was asked what the payment was for, and she was honest about this. She told the representative that she was sending the money for a cryptocurrency investment and the payment was eventually to be made to her advisor at the firm she was investing with. Therefore, I have no reason to believe Mrs C would have been dishonest with HSBC about the purpose of her payment had it intervened sooner.*

*Some the information provided to the representative should have caused concern. Rightly so, the advisor identified the unusual nature of sending funds directly to an advisor rather than to the business she was trading with. And this clearly had an impact on Mrs C as she became noticeably cautious about the payment and asked the representative to reverse the payment. However, the representative didn't probe any further or advise Mrs C on how she might check the company she was dealing with was legitimate.*

*Mrs C didn't appear to be knowledgeable regarding the investment she was to embark on, and merely stated on the call she'd return to the advisor and check everything was ok before attempting the payment again. But the advisor had already been identified by the representative of HSBC to be acting in a way that was consistent with scams, but this wasn't challenged, and no warnings were provided. The representative of HSBC also missed an opportunity to educate Mrs C on the common features of investments scams and pick up the on the substantial credit into the account from a finance provider which was equal to the £20,000 she'd transferred or attempted to transfer that day.*

*As Mrs C had been honest with HSBC on the call, I find it likely that had these facts been questioned, she would have likely disclosed that she'd been asked to take out loans to fund the investments. This would have been a significant red flag to HSBC that I find would have led to a conclusion that Mrs C was likely being defrauded.*

*For all the above reasons, I find HSBC did miss an opportunity to effectively identify and warn Mrs C that she was being defrauded. And for those reasons, I find it should take responsibility for Mrs C's loss.*

*Should Mrs C share liability for her loss?*

*HSBC has argued that even had it been able to stop the payments and prevent Mrs C falling victim to the fraud, she should share some liability for the loss due to a lack of due diligence carried out on the business she was trading with. It also feels Mrs C ignored some of the red flags she was presented with throughout.*

*Having considered the evidence carefully, I'm minded to agree with the some of the arguments HSBC has raised.*

*Mrs C has admitted that the only due diligence check she carried out was via Companies House. However, having checked the register myself, I'm unable to find any company that is, or was, trading at the time by that name. The only business that bears a similar resemblance was dissolved prior to Mrs C beginning contact with the fraudsters.*

*I've also carried out general open resource checks on the website where Mrs C was directed to—which was the same name as the business—and can see reviews pre-dating Mrs C's contact with them highlighting that the company was fraudulent and that numerous victims had been subjected to the same fraud.*

*I also agree with HSBC's submission that Mrs C failed to pick up on some of the red flags she was presented with throughout her dealings with the fraudsters.*

*Mrs C, through her representative, informed our service in October 2022 that she took the loans out that funded the investment for genuine home improvements prior to proceeding with the investment. She further submitted that she didn't lie about the purpose of the loans. However, this contradicts a conversation Mrs C had with our service when setting up her complaint in May 2021. I've listened to the call Mrs C had with a representative of our service and she was explicit in the fact that she had been instructed by the fraudsters to take out the loans, lie to the credit providers and say they were for home improvements.*

*Considering the dates the loans were paid into Mrs C's account, and that this was Mrs C's initial testimony, I find the earlier explanation to be the more realistic one and in line with known fraud patterns.*

*Mrs C acknowledged to the representative over the telephone that she doubted the reasons why she was being asked to lie to a legitimate business. She also expressed her doubt surrounding the unrealistic returns being promised by the fraudster. I find these factors to be compelling in questioning Mrs C's reasons for continuing with payments where she held little information about the company she was dealing with and had doubts about the instructions she was given.*

*Having said this, I want to acknowledge that I do think Mrs C's comments were made with the benefit of hindsight, and it's clear to me that Mrs C was in a vulnerable position at the time. From the evidence I've seen, Mrs C has demonstrated that she was suffering emotional distress at the time she fell victim to the fraud. She has told our service that she was going through a difficult time as she'd recently gone through a divorce, had become a single parent and was trying her best to improve her family's financial situation.*

*I'm empathetic to Mrs C's situation and the fact that she has been a victim of a cruel and lifechanging fraud. But when considering what is fair and reasonable here, I find she must*

*share equal liability for her loss for all the reasons I've given above.'*

The time limit for both parties to respond has now elapsed. So I'm now in a position to come to my 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.

Both parties have responded to my provisional decision. They've both agreed with the findings set out in that decision and have provided no further comment or evidence for me to consider.

I therefore don't intend to depart from my provisional findings which stand as my reasoning for the outcome I've highlighted below.

### **Putting things right**

HSBC should now go ahead and repay Mrs C 50% of the funds she lost as a result of the fraud. I've calculated this to be £39,541.56. This should deduct the £192.84 Mrs C was paid back from her cryptocurrency wallet.

I've also had to consider an appropriate amount of interest to award here considering the complex nature of where the funds have originated from. I'm mindful that Mrs C has funded the payments to the fraudster through a number of different sources, including from various bank accounts and loans from credit providers.

It's not possible to quantify Mrs C's exact losses given the number of factors at play. In view of this, my intention with the interest to be awarded has been to take a pragmatic approach, based on what interest I consider is fair and reasonable in the circumstances. As such, it is my view that HSBC should add 8% simple annual interest on top of the amount to be reimbursed from the date of the payments to the date it settles the complaint.

### **My final decision**

For the reasons I've given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Reimburse Mrs C £39,348.72 of her losses
- Pay 8% simple annual interest from the date the payments were made, to the date it settles the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 April 2023.

Stephen Westlake  
**Ombudsman**