

## The complaint

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

## What happened

I issued a provisional decision on this case on 12 October 2022. I've copied the content of that document below:

*Miss B saw an advert for a 'cryptocurrency investment firm' on a social media platform. Miss B conducted internet searches of the company and found a forum containing largely positive reviews. On this basis she left her details to be contacted on.*

*Miss B was contacted by an individual purporting to be an account manager. He talked her through how cryptocurrency works and provided Miss B with some investment training. After this, Miss B agreed to make an initial trial payment of around £260 to invest. She was shown her 'investment' on a trading platform which led her to believe she'd made a profit of around £100. Miss B was contacted by her manager's 'secretary' who helped her set up a Binance account, by which to withdraw her profits, which she did successfully. Encouraged by these profits, Miss B agreed to make further payments to the firm via Binance, as listed below:*

<b>Date of payment</b>	<b>Amount</b>	<b>Payment method</b>
14/05/2021	£2,000	Debit card
20/05/2021	£9,000	Debit card
20/05/2021	£9,000	Debit card
20/05/2021	£2,000	Debit card
24/05/2021	£5,000	Debit card
02/06/2021	£10,000	Debit card payment funded by loan with HSBC

*Miss B was told that the final payment she made for £10,000 was to pay HMRC taxes she'd incurred on her profit. Miss B has explained both her account manager and his secretary were 'threatening' and advised if she didn't pay this, she wouldn't receive her profits. Miss B questioned why this hadn't been explained sooner and was told it was a very normal procedure. Miss B therefore took out a loan to cover this payment. After making the final payment, Miss B expected to receive her profits within two hours. When this didn't happen, she tried to call her manager back, but the telephone number was no longer active. At this point she realised she'd been the victim of a scam and contacted HSBC to raise a fraud claim.*

*HSBC considered the claim but didn't agree it was liable to reimburse Miss B. It said as Miss B authorised the payments, she would need to contact the retailer directly to dispute them. Unhappy with HSBC's response, Miss B brought the complaint to our service. Our investigator considered the complaint and upheld it. Although she didn't consider the initial payment to be unusual, she found the second payment – for £9,000 – ought to have triggered HSBC's fraud alert systems, as it was unusual and uncharacteristic for the spending on Miss B's account. And she was satisfied that had HSBC intervened, the scam*

would likely have unravelled. She also considered whether Miss B had contributed to her losses but found she hadn't.

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

- Miss B appeared to have had concerns before making the final payment of £10,000 to the fraudster – and would likely have had these sooner, had she conducted further checks before investing
- Miss B did on occasion make large payments, including one for £9,000 in March 2021. It therefore doesn't consider the second payment Miss B made was out of character for her account.
- Even if HSBC had intervened, there were no warnings at the time about the firm Miss B was corresponding with. It could therefore only have provided general investment warnings, which it doesn't consider would've stopped Miss B from deciding to invest.
- Contributory negligence should be considered as Miss B didn't conduct enough checks before making the payments. HSBC finds the reasons given for the final payment of taxes to be particularly implausible and a warning sign that it considers she ignored.
- The 8% simple interest applied to the adjudicator's view wasn't in line with our approach. HSBC considered interest applied at the savings account rate would therefore be more appropriate.

The investigator agreed with HSBC's comments regarding interest at the account rate being appropriate and advised Miss B of this amendment to her opinion. As HSBC didn't agree with the investigator's opinion, the complaint has been referred to me for a decision.

### **My provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 B were made using her debit card and there's no dispute here that she authorised them. Miss B is therefore liable for payments unless there is evidence HSBC could and should have done more to protect her, which is the issue I've considered.

First, I'm persuaded Miss B did fall victim to a scam – while there are no warnings available on the FCA website to confirm this business was acting illegitimately, the actions of the individual she corresponded with (including contact via enquiry form, an initial small investment with quick returns, the 'account manager' and trading platform set up) all bear the

hallmarks seen in investment scams, as well as the request for a final 'tax' payment followed by lack of contact.

Miss B made a number of payments. But none of them went directly to the fraudster. Instead, Miss B was making payments to a genuine cryptocurrency exchange. This is important as it wouldn't have been known to HSBC where the ultimate destination of the funds was. 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 B made a number of debit card payments from her account. I agree with the investigator that the first payment wasn't unusual or uncharacteristic for the account, based on the payment's value. I therefore don't find HSBC ought to have intervened when the first transaction of £2,000 was made.

However, I find the first payment made on 20 May 2021 for £9,000 was sufficiently unusual and uncharacteristic that it ought to have triggered HSBC's fraud systems and the payment paused for intervention. I appreciate HSBC has flagged one other previous bill payment in the past six months of a similar value as its rationale that this scam payment wasn't sufficiently unusual – but I disagree with this. Firstly I don't agree that one prior payment would make a later transaction not appear as unusual – if anything I think both stand out as unusual against Miss B's general account use and could warrant intervention. The fraudulent payments were also made to a cryptocurrency exchange. While I accept that buying cryptocurrency is a legitimate exercise, 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 B had been sending money to a legitimate cryptocurrency exchange, 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 B 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 Miss B with information about the high risks associated with these types of investments and common hallmarks of scams.

Miss B has explained she's lost her life savings through this scam. Had Miss B been advised on the common hallmarks of investment scams, the majority of which (as I've listed above) featured here, I think it's more likely than not that Miss B wouldn't have proceeded with the payments and the scam therefore could have been stopped, preventing further losses.

I also need to consider whether Miss B ought to bear some responsibility for the losses she incurred. HSBC has stated Miss B ought to have done more checks before proceeding with any payments, and been particularly concerned when making the final payment for £10,000. I don't think Miss B acted unreasonably when initially making payments towards the scam – by this point the fraudster had taken a lot of time to build Miss B's trust, teaching her how cryptocurrency works and even providing her with perceived 'profits' from her earliest payment. Miss B thought she could see her money being invested and her profits accumulating so I can understand why, without any advice on how investment scams can appear, this appeared very genuine to Miss B.

However I do agree that when Miss B made the final payment of £10,000 there were further causes for concern that ought to have made Miss B pause and further question what she was being told. Miss B acknowledges the behaviour the fraudsters used when requesting this final payment was threatening – which I think should've alerted Miss B that something may be amiss. I think Miss B ought to have asked further questions after receiving this

*request – such as why taxes couldn't be released directly from her profits, why payment was being made to Binance rather than HMRC directly and why she hadn't been advised of this tax sooner. Overall, I'm persuaded Miss B should bear some responsibility for this particular payment, as more could've been done to assure herself this was genuine before proceeding. I therefore think HSBC and Miss B should be equally liable for 50% of this final payment.*

### **My provisional decision**

*My provisional decision is to partially uphold this complaint and for HSBC UK Bank Plc to:*

- Refund payments two to five listed above in full (totaling £27,000)*
- Apply interest for payments two to five at Miss B's savings account rate, from the date the payments were made until the date of settlement*
- Refund 50% of the final payment of £10,000 Miss B made towards the scam*
- Refund 50% of the interest Miss B paid towards the loan that funded this £10,000 payment, from when the loan was taken out to when it was paid off*
- Apply interest at Miss B's savings account rate on the funds Miss B used to repay 50% of her loan, from the date she paid off the loan, until the date of settlement.*

Both parties have now had the chance to respond to the provisional decision. HSBC confirmed it had no further comments to make. Miss B accepted the provisional findings, although made the following further comment:

- She only realised this was a scam after waiting for two hours for her profits - and the firm then disappearing. When Miss B spoke to the 'secretary' involved in the scam and felt threatened, she thought he was rude and not good at his job. She asked to speak to a 'manager' about why she was not informed at the beginning about this additional charge. The manager was calm and logical. At this point she still genuinely believed this was a legitimate firm.*

### **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have no doubt that Miss B genuinely believed the payments she was making were legitimate at the time she transferred the funds. However what I need to consider is whether, in light of all the evidence available at the time, she ought reasonably to have had cause for concern when making the final payment and therefore ought to also be held partially responsible for this loss.

As the fraudster had never made Miss B aware of any requirement to pay taxes until this final demand for payment, coupled with the secretary's sudden change in behaviour, I think there were additional red flags here that ought to have made Miss B pause and conduct further checks. Had she done so, I think it would've become clear to Miss B that it was not a usual request for investment firms to ask for HMRC tax payments and that further caution should be applied. Therefore I remain of the view that a 50% split of liability for this final payment is fair, considering all the circumstances of the complaint.

## **My final decision**

My final decision is that I partially uphold this complaint and require HSBC UK Bank PLC to:

- Refund payments two to five listed above in full (totaling £27,000)
- Apply interest for payments two to five at Miss B's savings account rate, from the date the payments were made until the date of settlement
- Refund 50% of the final payment of £10,000 Miss B made towards the scam
- Refund 50% of the interest Miss B paid towards the loan that funded this £10,000 payment, from when the loan was taken out to when it was paid off
- Apply interest at Miss B's savings account rate on the funds Miss B used to repay 50% of her loan, from the date she paid off the loan, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 December 2022.

Kirsty Upton  
**Ombudsman**