

The complaint

Mrs R is unhappy that HSBC UK Bank Plc (HSBC) won't refund money she says was stolen from her.

What happened

Mrs R is complaining about two separate sets of transactions. The first are debit card payments which she says weren't made by her. The second set of payments were bank transfers made by Mrs R after falling victim to a cryptocurrency investment scam.

The debit card payments

Mrs R is disputing transactions made on her current account using her debit card, these transactions were made between 27 July 2021 and 9 August 2021.

Mrs R says she was out shopping when she realised that she didn't have her phone. Mrs R got her phone back, as it had been handed into the "lost and found" at a store she'd been in. But she says it was about two or three hours before she realised the phone was missing. Mrs R says her phone was in a cover with slots for bank cards and she had several cards in with the phone, including her HSBC credit card and debit card. None of the cards were handed in with the phone and Mrs R says transactions were made on all of the cards.

Mrs R raised a fraud claim with HSBC and they refunded the transactions made on her credit card in full, however they declined to refund the transactions made on her debit card.

The payments made as part of the investment scam

During this time Mrs R fell victim to a cryptocurrency investment scam. Mrs R says she was promised a return of 300% and saw it as an opportunity to make some extra money to support her family. As a result of the scam Mrs R made three payments on 13 August 2021.

The payments were for £500, £1,300 and £300. They were all made to a cryptocurrency exchange which I'll refer to as F. Mrs R says that as part of the investment, she was told she needed to buy bitcoins, so she opened an account with F. The account opening process with F required Mrs R to provide a copy of her driving licence and a selfie photo. F say the selfie photo included facial recognition. All three of the payments from her HSBC account went to this account in Mrs R's name before she transferred the funds out to a separate account set up by the scammer, which Mrs R believed was in her name as well.

Mrs R became aware she was the victim of a scam, after she was asked to make multiple payments for fees or costs in order to release the profit she'd supposedly made with her investment. Mrs R says she confronted the scammer who blocked her and stopped communication.

Mrs R reported the scam to HSBC and asked them to refund her. HSBC agreed to refund 50% of the payments for £1,300 and £300 – paying £800 into Mrs R's account. However,

they declined to refund anything further, saying Mrs R should've done checks before making the payments.

Mrs R wasn't happy with HSBC's response about either set of transactions, so she brought a complaint to our service.

An investigator considered Mrs R's complaint but didn't uphold it. The investigator thought it was most likely that Mrs R had authorised the debit card payments because:

- Some of the transactions took place prior to the date Mrs R said she lost her cards.
- While Mrs R said she'd reported the cards missing as soon as she realised, some of the transactions were made six days later.
- Evidence from HSBC showed that Mrs R had logged into her online banking in between the disputed transactions, but Mrs R didn't report the transactions at those times.

The investigator also didn't recommend that Halifax refund Mrs R in relation to the scam payments saying:

- The CRM Code doesn't apply to the payments as Mrs R initially transferred the money from her account with HSBC to a cryptocurrency account held in her name.
- The transactions weren't so unusual or out of character that the investigator would've expected HSBC to have had concerns or intervened.

However, the investigator thought HSBC had provided a poor level of service to Mrs R and recommended they pay her £150 in compensation.

HSBC agreed with the investigator's recommendation. However, Mrs R didn't agree with the investigator's opinion, so 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

The card payments made on Mrs R's account

Generally, HSBC can hold Mrs R liable for the disputed card transactions if the evidence suggests that it's more likely than not that she made or authorised them herself.

Based on what Mrs R has told us, I think it's more likely than not she authorised the card payments she's disputing. I say this because the testimony she's given about losing her card doesn't line up with the transactions she's disputing and when they were made.

Mrs R says she lost her phone when she was out shopping and noticed it within two or three hours of it happening. She says that her cards were in the cover that held her phone. When Mrs R returned to the store, her phone had been handed in, but her cards hadn't. She says she didn't initially notice her cards were missing, however when she did, she notified HSBC and they blocked her card.

But the disputed transactions were made over a two week period. It's not clear how a fraudster was able to use her card for this period of time if Mrs R had reported her cards missing as soon as she realised they weren't in the cover of her phone.

Also, I can see that in between the transactions that Mrs R is disputing, there are genuine transactions that she hasn't disputed – also done with her debit card. These include a payment to a credit card provider, a supermarket and an ATM withdrawal. I can't see how both a fraudster and Mrs R could both use the card at the same time. And, if Mrs R had cancelled her debit card and got a replacement, the fraudster wouldn't have been able to use her old card.

HSBC have also provided mobile banking log-in evidence which shows that Mrs R logged into her accounts in between the disputed transactions. Based on the size of these transactions and the impact they had on Mrs R's balance, I think it's unlikely that Mrs R would've logged in and not noticed either the transactions out of her account or the impact on her account balance. And in noticing them, I would've expected Mrs R to immediately contact HSBC and cancel her card if she hadn't already done so.

I also have to take into account that the transactions were carried out over a period of two weeks and didn't drain Mrs R account of all available funds. If someone had found Mrs R's card and used it without her knowledge, I'd expect them to use the card to drain the balance as quickly as possible – as they wouldn't know when the card may be reported lost and stopped by the bank.

From what I've seen I think it's more likely than not that Mrs R either made the transactions herself or authorised someone else to make the transactions. On that basis, I can't fairly ask HSBC to refund her.

The payments Mrs R made after falling victim to a scam

I've considered whether Mrs R is entitled to a refund for the faster payments she made under the Contingent Reimbursement Model Code (the CRM Code). These were the three online payments she made for £500, £1,300 and £300.

The starting principle under the CRM Code is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam. But the Code is quite clear that it doesn't apply to all push payments. The CRM Code only covers APP scam payments when the funds are being transferred to another person and not to a consumer's own account. In this case, Mrs R made the payments from her HSBC account to a cryptocurrency account held in her name, before moving the funds onto the fraudster. This means I can't fairly hold HSBC responsible for reimbursing Mrs R under the CRM Code.

But HSBC also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam.

Having reviewed Mrs R's account use and the activity on her account prior to the scam, I'm not satisfied that the three payments she made should've been identified by HSBC as potentially concerning. I say this because Mrs R had made faster payments for a similar or higher value previously. Also, making multiple payments on one day, wasn't an unusual

pattern for her account. Overall, I'm not satisfied that these payments were particularly unusual or out of character whereby I think HSBC should've been concerned or intervened. So, I can't fairly hold HSBC liable or ask them to refund Mrs R.

I know HSBC have already refunded Mrs R 50% of two of the payments, with £800 paid to her account – this is more than I would've recommended.

The customer service Mrs R received from HSBC

Having listened to the calls Mrs R had with HSBC, I agree with the investigator that HSBC should've provided a better level of service.

In one of the calls, the HSBC staff member is brisk and unempathetic with Mrs R when she is clearly upset and in tears when reporting the investment scam. Also, I've seen the letters Mrs R was sent, which say she needs to contact HSBC and that they haven't heard from her. However, it's clear that Mrs R had called into HSBC. She was often transferred to different departments and some calls were disconnected. So, it appears that her calls may not have been logged with the appropriate departments dealing with her fraud claim.

I'm conscious that this was already a difficult time as Mrs R had lost a substantial amount of money to an investment scam. Based on that, I agree with the investigator's recommendation that HSBC should pay Mrs R £150 in compensation for the poor level of service she received.

I realise that Mrs R is going to be very upset that I'm not recommending HSBC refund her for the debit card payments or for the balance of the investment scam payments. But I'd like to reassure Mrs R that I have no doubts that she was the victim of an investment scam. Unfortunately, being a victim of a scam doesn't automatically mean that HSBC is liable to refund her.

Putting things right

To put things right HSBC UK Bank Plc should pay Mrs R £150 compensation.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Mrs R, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 December 2022.

Lisa Lowe
Ombudsman