

The complaint

Ms C complains that HSBC UK Bank Plc didn't do enough to protect her from falling victim to an investment scam.

What happened

Where the particulars of this case are well known to the parties, I don't intend on detailing them again here. Instead, I've summarised the background and focussed on the key reasoning behind my decision. This is not a discourtesy to Ms C or HSBC; it simply reflects the informal nature of our service.

In short, Ms C began speaking to someone online through a well-known dating application. The individual, who for the purposes of this decision I'll refer to as 'L', convinced Ms C to begin investing with online trading platforms. Ms C believed she had invested around £123,000, when in fact it was all a scam and she had been speaking to fraudsters who had stolen her money.

This all began in early 2021, with Ms C making a series of debit card payments to the cryptocurrency exchange platform, Binance. This website converted Ms C's money to crypto, with it then being sent onwards to the fraudsters. Amongst the disputed transactions, Ms C also made a payment directly to a UK bank account which was held with HSBC by another consumer. This £10,000 payment was made on 23 February 2021 and marked the fourth disputed transaction in the sequence of payments.

After making the final payment, Ms C became incredulous about the so-called investment venture and realised she had been scammed. When Ms C raised this with HSBC, it declined to refund the transactions, citing that it had followed due process.

Ms C then referred the matter to our service, and one of our investigators concluded that HSBC ought to have done more to identify and act on the payment on 23 February 2021. He thought the bank should refund that transaction and the subsequent payments Ms C made. And considering what happened, this refund should be subject to a 25% deduction for the role Ms C had to play in the situation she now finds herself in. Ms C accepts this.

HSBC does not agree. The bank has made it clear that it accepts that it ought to have acted differently towards this £10,000 payment – and that this should warrant a refund of the transaction and the ones that followed. However, HSBC submits that this reimbursement should bear a deduction of at least 50%, in light of Ms C's negligence.

Because HSBC is not in agreement, the case has been escalated to me to decide.

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.

Judging from the submissions HSBC has made to our service, in particular those in response to our investigator's assessment, I take it that the bank accepts that it ought to reimburse the payment made on 23 February 2021 and the transactions that followed (plus an award of interest on this sum).

This is on the basis that, pursuant to the relevant obligations and various principles of good practice it should follow, HSBC ought to have intervened with this payment on account of it being uncharacteristic compared to Ms C's typical spending patterns. And had it asked her suitably probing questions about the payment's purpose, it's more likely than not that this would have stopped the scam in its tracks. So, Ms C would not have lost the payment, nor the transactions that came afterwards.

Where this common ground has been reached by the parties, my focal point will be to determine what's left in dispute. That being, whether Ms C should receive the entirety of this sum. Or, whether it's fair and reasonable for only part of the refund to be paid by HSBC in light of her actions (or inactions).

But for the avoidance of any doubt, I will summarise why I agree with our investigator that HSBC ought to have intervened with this £10,000 payment. Unlike the prior payments (i.e. the first three disputed transactions) I find it was unusual and uncharacteristic enough to have expected HSBC to have stepped in and double-checked the instruction before it was executed. On the balance of probabilities, I think Ms C and/or HSBC carrying out further enquiries/research would have quickly established that she was in the process of being scammed and consequently the payment wouldn't have been sent and her losses from that point onwards would have been avoided.

To that end, all that's left for me to decide is whether this redress (a refund of the fourth disputed payment onwards) should bear a deduction for the acts or omissions by Ms C. This can otherwise be known as 'contributory negligence'.

contributory negligence

Contributory negligence is an important consideration when making an award. The concept derives from law and can be explained as weighing up whether a consumer should have done something to mitigate their losses, or if they should share some responsibility because they were partly to blame. Under these circumstances, to make a deduction for contributory negligence I must be satisfied of two things; Ms C was partly at fault for these payments being irretrievably made; and a link can be established between this fault and the financial loss she has incurred.

In assessing whether Ms C was partly at fault, I need to consider whether she acted as a reasonable person would to protect herself against the loss she suffered. The test is objective but needs to take account of the relevant circumstances.

Accordingly, I've thought carefully about Ms C's situation at the material time. She says – and I accept – that she was a relatively inexperienced investor who was not adept with the complexity of online trading. This was by no means her field of expertise and the application she was asked to download (separate to that of Binance's website) appeared legitimate.

It's not in question that this was a sophisticated scam where the fraudsters had earned Ms C's trust under the guise of a personal relationship in order to defraud her of her money. The scam appears to have been centred around a highly developed application that impersonated that of a genuine investment firm. Ms C says one of the reassuring elements was that the app's advanced software was very convincing and required her to apply for an account, much the same as a genuine network would require a signing up process.

As she describes it, Ms C's belief in the venture being genuine was reinforced by what she thought was the opening of an independent account on the platform that only she could operate. 'Seeing' her investments still within her possession on the platform made her think she was genuinely trading. By having sole control of what she believed was her deposits, Ms C trusted that everything was above board.

In light of this and the other factors Ms C has set out, I have little doubt that all of the circumstances manufactured by the fraudsters made everything appear legitimate to her. Given its intricacy, I can appreciate how Ms C was taken in by the scam.

However, on the other hand, I find it a reasonable expectation for an investor to carry out a level of due diligence before going ahead with any investment. The degree of expected research can vary, but here it's evident that Ms C could and should have done more to protect herself against this scam. Although she did carry out some checks prior to making the payments, from the beginning there was intelligence available to her that warned of fraudulent outfits cloning the genuine investment company she intended to deposit with.

The UK regulator, The Financial Conduct Authority (FCA), published a warning about the company shortly before Ms C made the first payment to Binance. Ms C has said that she managed to find this FCA warning when she began to have misgivings about L once the final disputed transaction had been made. So, it seems she would have been able to find this information earlier – and it's certainly common for the relevant regulator to be one of the first points of call when undertaking due diligence.

Ms C says the nature of her relationship with L did not begin with financial affairs and this changed somewhat when he introduced the idea of trading. Seeing as it was this individual that induced her into the scam, I find it fair to consider the supposed relationship Ms C had with L in the context of her share of responsibility.

I have borne in mind that Ms C seemingly placed a great deal of trust in L, despite not having met them in person, nor shared video calls or other means of communication that might better verify their identity. Although I don't doubt that there were some clever social engineering techniques used that gave her a false sense of security, Ms C nevertheless invested a great deal of money having only been in contact with L for a relatively short span of time. When assessing Ms C's actions against what a reasonable person in that position would have done, I don't find it an unreasonable expectation for her to have relied on more objective and independent sources of information before remitting any money.

What's more, Ms C has conceded that she was entertaining doubts about the destination of the £10,000 payment before she made it. By her own admission, Ms C questioned the legitimacy of this transaction considering she was instructed to pay a personal account rather than a business one. Despite these misgivings, Ms C went ahead with the payment. And in keeping with the principles of contributory negligence, it's fair for Ms C to be held partially responsible as she foresaw a risk of harm and proceeded nonetheless.

So, overall, I am satisfied that Ms C's endeavours should give rise to some liability for her loss. As I see it, there were times when she omitted to take reasonable steps to protect her own interests.

It's clear to me that this did contribute to the loss sustained; but for Ms C's acts and omissions, her money would not have been paid towards the scam. Therefore, I am satisfied there should be a commensurate deduction in compensation here.

The apportionment of this deduction is not an exact science. As a starting point, I do not judge that our investigator has got the facts plainly wrong nor have they misunderstood the material evidence. HSBC submits that Ms C's behaviour (some of which I've set out above) would make it fair to have split liability at the very least. I've already explained why agree that I must have regard to Ms C's share in responsibility and I can appreciate HSBC's argument that there should be an equal share of the blame (if not more).

That said, Ms C's conduct cannot be viewed in isolation; this should be weighed against the failures of HSBC. And what's distinct about this particular case is that I find the errors from the bank extend beyond just the prevention of the £10,000 payment, but also the events that ensued. For example, I've looked at the goings-on the following day leading up to the next disputed transaction. Ms C contacted HSBC via its online webchat service, where she specifically asked about the payment and whether it had been successfully sent to the recipient. During this course of messages, it's clear that Ms C intended to make the payment towards her investment platform, meaning that it's most likely she wanted to pay a business. She gave HSBC the name of the cloned investment firm, as she wanted to check that, by inputting this trading name when the payment was made, whether this meant it wasn't made properly as it did not match the name on the personal account she had been told to pay.

As a result, HSBC was aware that Ms C wanted to remit money to a particular firm, the name of this company and that the likelihood was that this ought to have been a business account that she had a holding with. In light of this information, the agent set out the discrepancies they could see with the payment that was actually made and, crucially, says that it might be a *scam*. It's clear there are suspicions that something untoward had happened, yet no follow up action was taken by HSBC. As I understand it, there is no record of any enquiries about this potential scam by bank staff and the matter is merely left there. Indeed, within a day or less of this exchange of messages, Ms C proceeds to send two payments to Binance that total of £7,000. Both go through without any questions asked.

I acknowledge there is a balance to be struck between acting on transactions that could potentially be fraudulent and minimising disruption to legitimate payments. The systems and procedures HSBC puts in place to manage those competing demands are a matter for the bank. However, it's neither unfair nor unreasonable to expect a bank to double-check account movements that ought reasonably to trigger concerns on account of fraud. And suffice to say, HSBC had notice of a potential scam. It was the bank that was the party that first suspected possible fraud. Not least, because it was expressly told that Ms C had made a payment intending to credit an account held in her own name with a business but it could see this was made to a *personal* HSBC account with an altogether different owner.

It's true that Ms C may have been convinced that everything was fine and the payment had in fact been received. Be that as it may, HSBC is familiar with consumers being fed cover stories and excuses by fraudsters to continue to extract money from them. It's not uncommon for suitably probing questions to unearth that a consumer has been misled by a mendacious scheme, even when that consumer is still under the spell of the scam.

In any case, I am persuaded that the bank was given clear indications that Ms C's account may have been subject to fraud, and there appears no compelling reason for why HSBC did not act on this intelligence. It had reasonable grounds to intervene in keeping with the various regulations and principles of good practice it should abide by. In simpler terms, it's evident to me that HSBC suspected a scam risk yet did not take appropriate action.

conclusion

I have concluded that HSBC ought to have acted differently when one particular payment was instructed by HSBC and, similarly, it had reason to be concerned about the information it was given by its consumer before the next transaction took place. On both counts, I am persuaded that Ms C would not have continued with making the payments and the scam would have been unveiled – meaning that ‘causation’ would be satisfied.

When arriving at the level of a deduction that should be made, it is just and equitable to take into account the severity of both the parties’ faults. While considering the bank’s role in what happened, I find it only fair to bear in mind the imbalance of knowledge and resource between Ms C and HSBC.

As a large international bank that frequently tackles all types of fraud, HSBC is aware that there is an array of investment scams that target consumers. This is relevant to apportioning responsibility, as HSBC will be more proficient at identifying the hallmarks of a scam compared to the average person who has less experience and insight into the techniques that are often employed. Ms C is merely the consumer; the bank is the financial professional with due diligence requirements.

Therefore, while Ms C may have been partially liable for the situation she now finds herself in, it’s my view that HSBC’s faults should mean that it bears more responsibility given the causative relevance. Taking everything into consideration, I judge it fair and reasonable that HSBC should pay 75% of the award (meaning that Ms C should sustain a 25% deduction for contributory negligence).

As I understand it, it hasn’t been disputed by either party that Ms C’s funds were held in a savings account before they were transferred into her HSBC current account to be paid towards the scam – and everything suggests the money would have remained in this savings account if the scam hadn’t occurred. It follows that, HSBC should add interest at the savings account rate from the £10,000 payment on 23 February 2021, until the date of settlement.

My final decision

For the reasons given above, my final decision is to uphold this complaint and that HSBC UK Bank Plc should:

- Refund the disputed transactions from the faster payment of £10,000 henceforth, less a 25% deduction; and
- Pay savings account interest on this sum, from 23 February 2021 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms C to accept or reject my decision before 16 February 2023.

Matthew Belcher
Ombudsman