

## The complaint

Ms L complains HSBC UK Bank Plc won't reimburse funds she lost to an investment scam.

Ms L was looking to invest in crypto currency and found an adviser who I'll call 'S' on a well-known social media platform. Ms L said S held themselves out as someone who was into finance and ran seminars on teaching people how to trade in crypto. S advised Ms L to open crypto accounts with Crypto.com. And S sent a link for the Bitfinex crypto platform. Both of these are legitimate crypto businesses. The following transactions took place as a result of the scam and were all sent to Crypto.com:

30 June 2021	£103.41 debit	Card payment
1 July 2021	£390 debit	Faster payment
2 July 2021	£1,484.07 credit	From Crypto.com
5 July 2021	£1,227.11 debit	Card Payment
5 July 2021	£2,205.91 debit	Card Payment
5 July 2021	£2,552.01 debit	Card Payment
7 July 2021	£8,900 debit	Faster Payment
8 July 2021	£11,352.75 debit	Card Payment
Total loss	£25,247.12	

Unbeknownst to Ms L, the app link to Bitfinex appears to have been fake and so she never really had an account with it. This came to light when Ms L wanted to make a withdrawal and was told her account was frozen due to money laundering concerns and that she'd need to deposit £20,000 to unfreeze it. She got in touch with Bitfinex directly, and she was told she never had an account with it and her email address wasn't the one linked to the account she thought was hers.

Ms L reported the matter to HSBC. But it didn't refund any of her losses and stood by that decision when she complained.

Our investigator upheld the complaint in part. She was satisfied HSBC ought to have intervened before allowing the final payment on 5 July 2021, as multiple payments were unusual for the account. And so she asked it to refund Ms L's loss from that point.

HSBC disagreed. In summary it doesn't believe Ms L did sufficient due diligence before investing, and it considers a return of over £1,400 from a small investment just a matter of days before to have been a red flag that ought to have alerted Ms L to something being

wrong. So it has argued there should be some deduction as Ms L has contributed to her own loss. It also cited an intervention call that took place before the payment of £8,900 was made, which it argues makes dear Ms L would have proceeded in any event; and as there weren't any warnings it doesn't think asking Ms L to do more research would have uncovered the scam.

Ms L has also mentioned in her complaint that she asked for a payment of £15,000 to be stopped but that didn't happen. I haven't seen evidence of a £15,000 payment being made as part of this scam. If either party is able to shed more light on that it is something I can take into account in any final decision.

I issued my provisional decision on 9 January 2023 explaining what outcome I was minded to reach. I said:

*Ms L authorised the transactions in question. Whilst she didn't intend to lose her funds to a scammer, she is initially presumed liable for the loss, as they were payment requests she had made of her bank.*

*However, HSBC is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud; and in some situations make additional checks before processing payments or declined them altogether, to protect customers from possible financial harm from fraud or scams.*

*I have looked at the operation of Ms L's account in the 12 months prior to the scam. And I agree with the investigator that I wouldn't have expected some of the earlier transactions in dispute to trigger HSBC's fraud alert systems, even if they were to a new payee. However, I also agree that by the third payment on 5 July 2021, there were sufficient flags such that HSBC ought to have recognised its customer was at risk. Prior to this day, Ms L had rarely made a transaction of more than a few hundred pounds. And whilst she sometimes did pay the same merchant more than once on any one day, that was never for the sums involved here. Given the amounts, that the payments were going to crypto asset providers and the velocity of the transactions, I think HSBC ought to have intervened before allowing the final payment through. I think it ought to have paused that payment pending further enquiries.*

*HSBC doesn't think an intervention would have worked as it did intervene in the next payment; it considers Ms L would have wanted to proceed in any event. Having listened to the call, I agree that Ms L was impatient to have it made. I also accept that Ms L was asked some questions around the payment, but it doesn't appear the call handler really listened to Ms L's responses.*

*I say this because Ms L clearly explains she is investing in crypto currency. Yet when the call handler gives information to Ms L about scams, investment scams doesn't feature at all - rather the call handler speaks of impersonation scams. I can therefore understand why Ms L wasn't that keen to hear what was said as it bore no resemblance to what she was doing.*

*Furthermore, Ms L was keen for the payment to be made and she tells the call handler it was to facilitate making a withdrawal and it needed to be done immediately. I consider this ought to have been a red flag to HSBC. Needing to make a payment to facilitate a withdrawal is an extremely common feature of investment scams, something the bank would have been very familiar with by 2021 - given these scams started to become commonplace in 2018 and have increased since. Whilst it's not for me to dictate what questions it should have asked it seems the call handler was more intent on following a script than having a good discussion with its customer about what was happening. Better questioning could have revealed that Ms L came by this opportunity on social media - something banks know, but the layperson might*

*not - legitimate businesses would rarely use. And I've already found it ought to have been on alert from being told of the need to make a deposit to withdraw funds. This meant HSBC could have provided a better scam warning and tailored it towards investment rather than other types of scam.*

*I have taken into account that Ms L was keen to make the payment and was fairly impatient during the call. But I don't find the same could be said had HSBC been more specific in response to what it did know; it didn't take much for Ms L to get in touch with the real Bitfinex and for the scam to unravel. And I'm satisfied some targeted scam advice from her trusted bank would likely have resulted in that far sooner.*

*HSBC has also argued that Ms L didn't do any due diligence and so she was contributory negligent: it argues that advising her to do more research wouldn't have brought to light information that would have shown she was being scammed. It seems to me that HSBC has almost argued its own point; if a customer couldn't have come across information for themselves that would have led to the discovery of a scam, then it's arguable they haven't contributed to their own loss.*

*That said, I am aware that during the aforementioned intervention call, Ms L was asked if anyone had contacted her about the investment. Ms L answered 'no', which wasn't true, and she was asked something similar on more than one occasion. At no point did Ms L divulge that she was in contact with someone, and that someone was advising her on how to invest in crypto currency. Had she done so, I think HSBC would have been more alert to what was happening and so tailored its questions better than it did. By answering the questions in the way she did, HSBC was prevented - to some extent - from doing a better intervention call. I am therefore minded to say that Ms L did indeed contribute to her loss, and I think a fair reduction would be 25% of her loss from the point I think HSBC ought to have intervened. This reduction fairly takes into account the responsibility of both parties, but also of the imbalance of knowledge and expertise between them.*

*The investigator also awarded interest at a savings account rate on the loss as a large sum had been transferred in from a savings account that Ms L then used for the investment. However, I'm not currently minded to make an award for interest at all. Ms L was clearly intent on investing in crypto-currency and went so far as to refer to this as a business. This was specifically what she was researching, when she came across the opportunity. As such, I'm satisfied that had Ms L not invested via S, she would likely have invested in crypto assets in any event. And as is well known, crypto assets can be quite volatile, such that it isn't clear she would have earned anything over and above her initial investment, such that an award of interest would be fair.*

*Finally, Ms L has referred to the Authorised Push Payment code, and that she should have been able to get a refund of the card payments under the chargeback scheme. I assume the code Ms L is referring to is the Contingent Reimbursement Model, if so that only covers authorised push payments to another person. All of the faster payments Ms L made were to her own account with Crypto.com and so don't fall under the code. The card payments aren't push payments but pull payments and aren't covered by the code either. And there was no prospect of a successful chargeback for the card payments as the service was provided - the transferring of fiat money into crypto currency by Crypto.com. That the crypto asset was further transferred to a scammer doesn't alter that.*

*I explained I was minded to ask HSBC to reimburse Ms L £17,103.57.*

*HSBC has accepted the outcome reached but wasn't able to shed any light on a payment of £15,000. Ms L has confirmed she has no further arguments to make. But she has explained when she reported the scam, she had over £15,000 in her account, and the final payment of*

£11,352.75 was only pending and hadn't left her account; its this she believes should have been frozen and so she wouldn't have lost it. She has provided further documentation to show when she reported the scam in support of this.

### **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.

As both parties have responded to my provisional findings, I can now proceed to issue my final decision. And as neither party has provided any further evidence or arguments for me to consider in relation to the amount I'm minded to award and why, I see no reason to depart from my provisional decision.

I thank Ms L for now clarifying the issue with regards to the £15,000 she had mentioned previously. And I now understand that's she's unhappy the final payment was still made, despite it being pending at the time of reporting the scam.

I do understand the point she is making and can appreciate her belief the payment could have been stopped. However, its my understanding card payments are a guaranteed form of payment and can't actually be stopped or reversed whilst they are pending. So HSBC wouldn't have been able to prevent the final amount being paid out despite the scam having been reported before it went. I also accept Ms L might have been passed through a few different departments and had to complete forms to no avail but given the different forms of payment used this isn't surprising. And chargebacks do usually necessitate the completion of a dispute form.

### **My final decision**

For the reasons given here and in my provisional decision, I uphold this complaint. I require HSBC UK Bank Plc to reimburse Ms L £17,103.57.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 10 February 2023.

Claire Hopkins  
**Ombudsman**