

The complaint

Miss G complains HSBC UK Bank Plc didn't do enough to protect her from losing over £35,000 to an investment scam.

What happened

Miss G has explained that in 2021 she made the following payments from her HSBC account, using her debit card, to fund what she thought was a legitimate investment with Malaikah Raja/Rod Market.

Transaction number	Date	Merchant	Amount (£)
1	29 March 2021	Moonpay	5,228.29
2	08 April 2021	www.binance.com	10,000
3	08 April 2021	www.binance.com	10,000
4	09 April 2021	www.binance.com	10,550
Total			35,778.29

When Miss G subsequently got in touch with HSBC to explain she'd been scammed, HSBC didn't reimburse Miss G's lost funds. Remaining unhappy, Miss G referred her complaint about HSBC to this service. As our investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Miss G and HSBC my provisional decision in November 2022 explaining why I was minded to partially uphold this complaint and the redress I considered appropriate. Now that both parties have replied to my provisional decision, and I've had the opportunity to review the case again, including the responses to my provisional decision, I'm now ready to explain 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.

Miss G has made detailed submissions in relation to her complaint. I've read and considered everything that she's sent in. But I won't be responding in similar detail. So if I don't mention a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

I've reached the same conclusions as explained in my provisional decision, and for materially the same reasons. I've explained my reasons again below.

Recovery

After the payments were made, I couldn't reasonably expect HSBC to have done anything further until Miss G notified it of the scam. Then, because these were debit card payments,

the only potential avenue for potential recovery of the payments would have been through the chargeback scheme.

However, Miss G made the payments from her HSBC debit card to Moonpay and Binance (and not directly to Malaikah Raja/Rod Market). This means the merchants here, for chargeback purposes, were Moonpay and Binance (and not Malaikah Raja/Rod Market). Moonpay and Binance legitimately provided the services intended (which was the purchase of cryptocurrency and then moving it onto a wallet of Miss G's choosing). The subsequent transfer of the cryptocurrency onto Malaikah Raja/Rod Market would not give rise to a valid chargeback claim through HSBC. So I don't think these payments were recoverable through HSBC once they had been made.

Prevention

Having decided the above, I can only uphold this complaint if I think HSBC reasonably ought to have prevented some or all of Miss G's payments to Moonpay and Binance in the first place – therefore preventing her loss or part of it.

It's common ground that Miss G authorised the scam payments in question here. She was tricked by the scammer into instructing HSBC to make the payments. I accept these were 'authorised payments' even though Miss G was tricked. So although she didn't intend the money to go to a scammer, Miss G is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

The first payment

I don't think the investigator's assessment on this was unreasonable. This payment was higher than Miss G's usual spend from her account. But there is a balance to be struck. Banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. And here, whilst the payment was for over £5,000, it was a single payment to a legitimate crypto exchange. If HSBC had sent a text message (or similar) to Miss G to confirm she had requested the payment, this wouldn't have prevented the scam since Miss G did request the payment (for what she thought would be a legitimate investment). And I'm not sufficiently persuaded I can reasonably say HSBC ought to have been obliged to have gone further than this and spoken to Miss G about this payment instruction before it allowed it through (which, in my view, would have been the only way Miss G's loss of this payment to the scam might

have been avoided). So I'm not persuaded it would be fair to hold HSBC responsible for the loss of this payment.

The second payment

Again, I don't think the investigator's assessment was unreasonable. I understand that immediately before this payment, Miss G instructed a higher debit card payment for £20,500 to Binance that was declined. In any event, this second payment (the £10,000) was for a substantial amount. And I'm satisfied taken by itself (and/or in conjunction with the first payment), this payment instruction was sufficiently unusual and uncharacteristic, such that, in order to meet its obligations summarised above, HSBC reasonably ought to have called and spoken to Miss G before allowing this payment through, to check everything was in order, to protect her against the risk of financial harm.

During such a conversation with Miss G, I would reasonably expect HSBC to have asked her who the payment was for, what it was for, and for basic surrounding context, and to have then proceeded appropriately from there with the intention to disturb or unearth a potential fraud or scam. I've not seen evidence that satisfies me HSBC did this, in circumstances where I think it should have.

I can't be certain – if HSBC had done this as I think it reasonably ought to have – whether this would have made a difference. Where I can't be certain about something like this, I need to make my decision based on the balance of probabilities – in other words, based on what I think most likely would have happened, bearing in mind all the available evidence. And here, I think if HSBC had appropriately spoken to Miss G before allowing this payment through, it most likely would have made a difference. I say this because when Miss G made the first payment (to Moonpay), she thought that was going to be the only payment she needed to make for the 'investment'. She was then told she had to 'upgrade' her account by depositing a further £30,000 (which would explain payment two to four). Like our investigator, I think Miss G's explanation for the reason for payment two therefore reasonably ought to have raised concerns to HSBC, since this is a known pattern for investment scams involving crypto.

There was information in the public domain – which HSBC ought to well have known, even if a lay consumer wouldn't – about the very high risks associated with crypto trading, including many warnings of potential fraud. For example, the FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. Regulated businesses ought reasonably to take notice of such insight. And by the time Miss G made this payment, cryptocurrency scams had risen greatly in frequency and it's reasonable to conclude that banks, such as HSBC, had had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

Although I think it's fair to say Miss G undertook a fair amount of due diligence before deciding to invest with Malaikah Raja/Rod Market, I think HSBC, if appropriate after referring internally for advice, really ought to have been able to impress upon Miss G the very high risk she was being scammed and the reasons why. And I think if HSBC had done this in the way I'd reasonably expect it to have, it's most likely Miss G would have then realised the risk of continuing with the payments was too high to accept.

It follows that I think Miss G wouldn't then have proceeded with payment two, nor payments three and four.

I've thought about whether Miss G should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). I don't think it's unfair to say Miss G wasn't as careful with these payments as she reasonably ought to have

been. She did undertake some due diligence – but at the point she was asked for a further £30,000, I think she reasonably ought to have had some concerns – but she proceeded anyway. I'm satisfied in these circumstances that there should be a 20% reduction to the compensation payable for the loss of payments two to four, to reflect Miss G's contribution to the loss of those payments.

Putting things right

It follows that I think HSBC should pay Miss G £24,440 (80% of payments two to four). It should also pay Miss G interest on that amount from the date of loss to the date of settlement calculated at 8% simple per year, to compensate Miss G for the period she has been deprived of this money.

I understand the experience has caused Miss G distress and inconvenience. And I am naturally sympathetic in cases like this where someone is cruelly scammed out of money, and there is an emotional impact too. However, I am mindful that the scammer was ultimately the root cause here. And whilst I have concluded HSBC most likely could have prevented payments two to four, as I've explained I also think a 20% reduction to the compensation due to contributory negligence is appropriate. Bearing all of this in mind, overall I'm satisfied the award I have set out here represents a fair outcome to this case, so I don't make an additional award for distress and inconvenience.

My final decision

For the reasons I've explained, I uphold this complaint in part and I direct HSBC UK Bank Plc to pay Miss G £24,440 plus interest calculated at 8% simple per year from the date of loss to the date of settlement. If HSBC deducts tax in relation to the interest element of the award, it should provide Miss G with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 February 2023.

Neil Bridge
Ombudsman