

## The complaint

Ms J complains that HSBC UK Bank Plc (“HSBC”) declined to refund money she lost after being scammed.

## What happened

### *What Ms J says*

Ms J met someone through a social media platform who, over a couple of months, persuaded her to invest in cryptocurrency (“crypto”). This person told Ms J that they’d made money investing with a crypto investment merchant I’ll refer to as B.

Ms J was given a link to open an account with B who were based overseas. Ms J was also told to open an account with an online currency exchange merchant who I’ll refer to as V. V used a UK based currency processor to deal with their payments who I’ll refer to as M.

Ms J was told that the more funds she invested, the higher her return would be. She was given access to a “trading account” which showed the movement of funds she’d invested in. Ms J was able to access this through a dedicated “app” provided by B.

The following is a table of relevant payments made to V through the services provided by M. Ms J believed these payments were then channelled to B:

Date	Amount	Note
26/10/2020	£1,314	
27/10/2020	£7,000	
30/10/2020	£1,584.99	“Profit” received
02/11/2020	£2,000	
02/11/2020	£5,000	
04/11/2020 – 06/11/2020	£7,444	Failed payment & then resent.
09/11/2020	£12,200	“Tax”

After the first payment, Ms J was informed she’d already made some immediate gains and decided to make a further payment before receiving this “profit”. Ms J went on to make several additional payments to B, some to different account names held with V. Ms J said that the change in account names was explained to her that different opportunities to invest required her to send the money to these different accounts. She didn’t think this was suspicious at the time.

By early November 2020, Ms J wanted to release some of her profit and was told that she needed to pay “tax” on her investment. Ms J then made the final payment of £12,200, after which she faced delays and excuses about why she couldn’t get her funds out of the account. She was told that if she paid more, the process of returning her funds could be expedited, but she refused. Eventually she realised she’d been the victim of a scam and approached HSBC about the loss. Ms J was told to go to M about the payments but got no further with her enquiries, eventually going back to HSBC who declined to refund her.

#### *What HSBC have said*

Initially, HSBC questioned why Ms J had waited for so long before contacting them about her loss. They didn’t think that Ms J had spoken to them about the issue until around March 2021. It was later discovered that Ms J had contacted HSBC around the end of November 2020 when she’d been told to go to M about her losses.

HSBC approached M who told them that the account the scammed funds had been sent to was no longer open (V), so nothing further could be done.

HSBC attempted to retrieve Ms J’s investments but were unsuccessful and declined to make any refund to her. HSBC told Ms J that they couldn’t offer a refund because the payments were made to an overseas account and HSBC couldn’t consider them under the Contingent Reimbursement Model Code (CRM Code). HSBC repeated their advice for Ms J to approach M about her losses.

#### *The investigation so far*

Unhappy with HSBC’s response, Ms J brought her complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators. Further evidence was sought from both parties and Ms J was asked about the background to the investment in more detail. She was able to confirm that she’d researched M, who were based in the UK, but hadn’t looked into the investment firm themselves (B).

HSBC provided details of their efforts to retrieve the funds which were unsuccessful. They also sent additional information about the account, including statements.

After considering the complaint, the investigator upheld it and recommended that HSBC make a refund to Ms J of all but the first payment including adding interest at 8% on the money she lost. She didn’t think HSBC should have noticed the first one as it was only for £1,314 and wouldn’t have seemed unusual based on how Ms J normally operated her account. The investigator believed that HSBC should have noticed the unusual nature of the payments when Ms J made the second payment for £7,000.

HSBC disagreed with the investigator’s outcome and argued that Ms J should bear some of the responsibility herself for her losses. HSBC argued that they should only refund 50% of the money lost because:

- Ms J failed to carry out sufficient due diligence, particularly in regard to B.
- They were never informed about B when Ms J spoke to them.
- There was limited information about the background to the investment given to them.
- M are a legitimate payment processor so Ms J’s payments would appear as a genuine investment.
- HSBC didn’t believe a conversation (if they’d had one) with Ms J would have dissuaded her from investing with B.

- HSBC thought it noteworthy that there was a delay in notifying them about the scam – (which was later found to be an incorrect assessment of the facts).
- HSBC referred to various regulations requiring the account holder to be responsible for their decisions when making payments.
- HSBC believed it wasn't reasonable (for Ms J) to make these payments over such a short period of time without further checks on whether the investment was legitimate.

After reviewing the comments made by HSBC, the investigator maintained that Ms J shouldn't be responsible for any of her losses. HSBC asked for a further review of the complaint which has now been passed to me for a decision.

I asked for further clarification about some of the background to the situation and Ms J was able to say:

- The investment was similar to how the stock market operated when investments were made.
- She wasn't given any terms or conditions for the investment scheme.
- Ms J believed the investment was legitimate because she was sending money to a UK based company (M).
- Ms J was never contacted about any of the payments by HSBC.

I issued my provisional findings on the merits of Ms J's complaint on 20 February 2023. In my provisional findings, I explained why I intended to uphold Ms J's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*What I've provisionally 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.*

*Ms J accepts that she herself authorised these payments, so in the first instance she's held responsible for them, but HSBC are expected to protect Ms J from financial harm where the circumstances are sufficiently unusual or suspicious. At this point of the complaint, HSBC have already agreed to repay 50% of the lost investment.*

*To simplify the complaint, I don't intend to go into substantial detail about HSBC's failure to intervene. As they accept they have to make some form of refund, it follows that they accept they should have intervened at some point.*

*I agree with the investigator's assessment of this, which is that the £7,000 payment should have triggered that intervention. But I don't accept HSBC's reasoning that it wouldn't have made a difference, and I'll explain why.*

*This situation had the hallmarks of a crypto investment scam which was, or should have been, well known to HSBC at the time because:*

- *Ms J was approached via a social media platform and over a period of time persuaded to invest in this scheme.*
- *She was provided with an app*
- *She was instructed to open multiple accounts.*
- *There were no agreements about the investment.*
- *She'd been told she was to receive an immediate payment from her initial*

*investment.*

- *Ms J was given access to an online trading screen showing her investment increasing substantially.*

*The manner of channelling the payments themselves seems suspicious on its own. If it was a legitimate crypto investment, there seems little use for payments to be sent to a currency exchange account (V) first. That's because crypto can generally be purchased in most major currencies. Also, there doesn't seem to be a legitimate crypto merchant involved here, which is a departure from the usual scam and another red flag. Essentially, Ms J was asked to open a currency account with V and send money to the scammers – everything else was window dressing to convince her to part with her savings.*

*Ms J hasn't said she was asked to lie to her bank by the scammers at any point, so I think if HSBC had spoken to her, HSBC could have established a reasonably accurate picture of the arrangements as far as Ms J was aware. I think it's then likely to have yielded enough information about the situation for HSBC to warn Ms J about the likelihood she was being scammed. So, I do think that a conversation would have made a difference, but I also have to consider if Ms J should be held liable for some of the loss herself.*

*Should Ms J bear some of the loss herself?*

*Ms J can only be held liable for some of the loss if she acted unreasonably when she was involved in the scheme. This is known as "contributory negligence", and it's generally defined as "... a lack of care on the consumer's part that goes beyond what we would expect from a reasonable person".*

*So here, the question I have to consider is did Ms J's actions fall below that standard? It's apparent that Ms J is an inexperienced investor, so I wouldn't expect her to approach this situation with a deep understanding of crypto investing or the risks associated with it. From her submissions, she was brought into this through her interaction with an individual on an unrelated social media website. It's difficult to understand the level of persuasion carried out by them because the detailed conversations are no longer available, but I think it's reasonable to assume that Ms J developed some level of trust in this person because she was willing to commit considerable funds to the scheme on their recommendation.*

*That in itself would likely remove some of the doubts a person might have to making such an investment, particularly if Ms J had built a rapport with this person over the months she was interacting with them. She'd also been persuaded that large profits had been made as a result of investing with B.*

*It doesn't appear that Ms J queried who B were or attempted to check that they were legitimate, although when I looked, I couldn't find much about B during the time Ms J was investing. So, even if Ms J had checked into B, I don't think there was much she would have found that would have indicated she was being scammed.*

*She did check who M were, but there's no information that Ms J looked into V – who were operating the accounts that received her funds. It seems that V were being used to channel the funds to the scammers as a currency exchange platform, so I don't think there was much for Ms J to find here even if she'd looked.*

*But, once Ms J had made a small investment, a few days later she received a payment into her account, which she was told was her "profit" from the investments. I think this likely provided confidence to Ms J that she was involved in a legitimate investment scheme, which would no doubt help to banish any remaining doubts she may have had about sending them money.*

*Ms J continued to send payments to B until she'd built up her investment which she was able to view via her app on the trading portal. Once she asked to remove funds, she was asked to make a payment of 20% to account for the "tax". I don't think a reasonable person in the same position as Ms J would necessarily question this payment, particularly as international taxation matters can be extremely complex. Up till that point, Ms J had no doubts about the scheme, so wasn't approaching the request for tax with any particular distrust or suspicion.*

*There are some factors here that I think Ms J could have been a little more sceptical about, but it also appears she'd gained a level of trust in the person who directed her to B, so I think this would have given her confidence that she was sending her money to a legitimate investment broker.*

*HSBC made other points about why they think Ms J should be responsible for some of the loss including the lack of information given to them by Ms J. But, by the time Ms J spoke to HSBC about the issue, she'd already lost the funds and had been effectively turned away by them in November when she first raised the issue of the scam.*

*HSBC also argued that M are a legitimate investment company, so these payments wouldn't appear suspicious to them. If M were a legitimate investment company then the same reasoning would also apply to Ms J. But, as far as I'm aware, M aren't an investment company, rather a currency processor who operated an account on behalf of V. So, either way I think HSBC should have identified these unusual payments and intervened.*

*HSBC are correct in that legitimate instructions given to them should generally be carried out and there's a level of responsibility on the account holder regarding the payments they make, but similarly there's an obligation on HSBC to protect Ms J from fraud or financial harm where there are grounds to establish the payments were out of the ordinary which they were here.*

*HSBC have argued that Ms J should shoulder some of the loss herself, but on balance, and based on all the evidence I've seen, I don't think her actions were noticeably different to what I'd expect from an inexperienced investor who was lured into a crypto investment scheme. This scam was sophisticated in nature, including trading screens and access to a specific app. Both of these would, I'm sure, give a sense of legitimacy to the whole process. So, I currently don't think that Ms J should bear any of the loss herself apart from the first payment.*

#### *Redress*

*I've also thought about the way HSBC dealt with Ms J in the first instance when she brought her scam to them. At the time, they told her to go to M and effectively ignored her issue. I don't think this was a fair way for HSBC to act when it was apparent that she'd lost large sums of money and was looking towards her bank to help her. I do recognise that the scammers were the ones who stole her money, but I've little doubt that the extra time it took to register the issue with HSBC caused Ms J additional unnecessary stress. I'm currently thinking about recommending an additional award and I think a payment of £250 is appropriate.*

#### *My provisional decision*

*I'm intending to recommend HSBC make a refund. I've calculated that Ms J's total loss was £34,958 and the scammers returned £1,584.99. I'm not including the first payment of £1,314 so the total I'm recommending HSBC refund is £32,059.01. These funds originally came from her savings account and Ms J has confirmed she wouldn't have used them for other investments. So, I think the rate of interest applicable to the losses should be the appropriate*

*account rate from where the money originated, calculated from the payment dates to the date of settlement. I'm also intending to recommend a payment of £250 for the way HSBC handled the initial contact by Ms J.*

I invited Ms J and HSBC to give me any more evidence and information they wanted me to consider before issuing my final decision. Ms J didn't have anything further to add about her complaint and HSBC, in summary said:

- To clarify that the payees were to different companies/ individuals rather than M.
- The payments were made internationally to payees not based in the UK, contradicting Ms J's assertion that she carried out research and the merchant was legitimate.
- Meeting someone in a social relationship which turned into an investment one was suspicious.
- HSBC believe that the absence of negative information (about B) doesn't absolve Ms J from all responsibility.
- The profit she received was too good to be true when considering the short period of time and the annual return rate – calculated by HSBC as 2,132% annually.
- Our service's has general approach to payments for "tax" is that it's implausible and not part of a general investment arrangement.
- It's noteworthy that Ms J's refused to pay a second amount.
- Ms J thought she was dealing with a UK company – so why would this be an international taxation matter?
- HSBC expected some due diligence from Ms J when receiving this request (for tax).
- HSBC don't concede responsibility for Ms J's loss.
- If it's found that HSBC acted in error but a warning wouldn't have made a difference then it should follow that Ms J should not receive a refund.
- HSBC argue that the rapport built up with the scammer would have influenced how Ms J reacted to a warning from the bank.

### **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.

HSBC made a number of points which I've considered in relation to the evidence and my thoughts set out in the provisional decision. Overall, I won't be changing my position, but will explain my thoughts based on the additional comments made by them.

In my provisional decision I explained the basis for the arrangement Ms J was involved in and I don't intend to repeat that in detail here. The main points worth reiterating are:

- Ms J looked into a UK company used in the payment journey for her "investments" (M) – who are a legitimate UK based company.
- M operated a platform which (V) used to receive funds that were paid to various companies and individuals.
- Ms J has already explained the reasons for making payments to different entities.
- There's no detailed evidence available regarding the interaction between Ms J and the scammer on the social media platform, but it's apparent that she'd developed some level of trust with that person – no doubt allaying some of her suspicions.
- This was pitched as a crypto investment which was (and still is) a volatile market, so it's not inconceivable that large profits could be made in short periods of time.

- I think it would be unusual to say that international taxation is anything but complicated and whilst it may be implausible in some situations to think that a person may have to pay it, my considerations relate to the specific aspects of Ms J's situation. As mentioned, Ms J wasn't suspicious at this time and thought the request was a legitimate one.
- Ms J's refusal to pay a further amount related to an attempt to get further funds to "expedite" her investment payment rather than more "tax" – which I think Ms J was wary of and she then realised she'd probably been scammed when she failed to receive any funds.
- Ms J has said she was making payments to a UK based company – but her investment app was in a foreign language, so I don't think she thought the investment was being carried out from the UK.
- I understand HSBC now don't concede responsibility for her loss, but they earlier argued that they should only have to pay 50% of the losses. It's my determination here that HSBC should have intervened. and it would likely have made a difference due to the factors I've already set out, so it follows that they're liable for these losses as set out in my provisional decision.
- It's evidence that Ms J was influenced by the scammer, but she also said she took confidence from HSBC's lack of intervention ( believing if it was a scam then they would have contacted her). If they'd intervened at the second payment, then I think it's likely that Ms J would have listened to HSBC and took their warnings seriously, preventing any further loss.

So, the findings I made in my provisional decision are adopted as my final decision. Overall, HSBC's failure to intervene led to the losses made by Ms J (apart from those already identified). I'm satisfied there was ample evidence that the transactions were unusual, and HSBC's intervention would likely have made a difference. I realise HSBC themselves didn't cause the loss, but they were in a position to prevent most of them.

### **Putting things right**

In order to settle this complaint, HSBC should now make a refund. I've calculated that Ms J's total loss was £34,958 and the scammers returned £1,584.99. I'm not including the first payment of £1,314, so the total I'm recommending HSBC refund is £32,059.01. These funds originally came from her savings account and Ms J has confirmed she wouldn't have used them for other investments. So, I think the rate of interest applicable to the losses should be the appropriate account rate from where the money originated, calculated from the payment dates to the date of settlement. HSBC should also pay £250 for the way HSBC handled the initial contact by Ms J.

### **My final decision**

My final decision is that I uphold this complaint against HSBC UK Bank Plc and instruct them to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 28 April 2023.

David Perry  
**Ombudsman**