

## The complaint

Ms J complains that HSBC UK Bank Plc (“HSBC”) have unfairly refused to refund over £370,000 she lost as part of an investment scam.

## What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Ms J says she fell victim to an investment scam with Bosworth Consulting Group (“the scammers”) in August 2021. Her husband (Mr J) was cold called by a company saying it was planning a hostile takeover of the firm in which he held shares. The scammers said they were looking to buy them and told Mr J he would receive around \$600,000 in profit.

Ms J, who was also involved in the discussions, then made multiple payments from her account between 26 August 2021 and 24 December 2021, collectively totalling over £370,000, towards what she believed were the fees and taxes involved in selling the shares to a company in the US.

Ms J realised she had been scammed when the scammer contacted her in January 2022 requesting further payment, where she then discovered an FCA warning about the scam company she was dealing with.

HSBC refused to refund the money Ms J had lost. It said the payments were not covered by the Contingent Reimbursement Model (CRM) Code as they were all made internationally. It said it had also spoken to Ms J twice about the payments, and that she was happy for them to be released. So, HSBC said it would not reimburse the money as she had authorised the payments.

Our investigator didn’t uphold the complaint. He didn’t think the payments Ms J was making from her account would have appeared unusual. And although HSBC did have an opportunity to prevent the scam when it spoke to Ms J, he didn’t think any further questioning would have likely prevented her from making the payments. Ms J disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in March 2023. I said I was minded to uphold it and set out the following reasoning:

*It isn’t in dispute that Ms J authorised the disputed payments she made to the scammer from her HSBC account. The international payments were requested by her using her legitimate security credentials provided by HSBC, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.*

*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 their customer is at risk of fraud; and in some situations, make additional checks before processing payments or to decline them altogether to protect customers from possible financial harm from fraud or scams.*

*I have looked at the operation of Ms J's account over the 12 months prior to the disputed payments, and I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as HSBC that Ms J's account was being subjected to unusual and uncharacteristic activity. Indeed, this is not in dispute as Ms J was in fact asked to call HSBC's fraud department on two occasions, once in September 2021 and the second time in December 2021. Accordingly, it's just a question of whether the bank went far enough in all the circumstances with those interventions.*

*HSBC hasn't been able to provide any call recordings of the discussions it has with Ms J about the payments. But Ms J has been able to provide her own account of what was said. She says that she first received a text from HSBC in or around September 2021 (she doesn't know of the exact date) asking her to call HSBC. She called and said the only question it asked was whether she was under any pressure to transfer the money, to which she said she wasn't, and the payment was released.*

*On the second occasion, Ms J received a further text from HSBC on 14 December 2021 asking her to get in contact with its fraud department. She said the bank told her the payment had been flagged as possible fraud, to which she explained they it was related to a share transaction, as a buyer in the US was trying to buy shares for a hostile takeover of a UK company. She said the transactions were being made via a US company, and that she remembers the agent saying "you couldn't make that up" after she had provided all the information.*

*As I've already mentioned, HSBC has been unable to provide a copy of these call recordings. But based on Ms J's account, I'm not persuaded it went far enough in its questioning of her and failed to probe further to see if she was at risk of losing her money to a scam. It isn't clear when in September 2021 Ms J spoke to HSBC, but having considered her account history, I think the second payment of £19,500 she made on 27 September 2021 at least ought to have triggered an intervention by the bank, as it was the second large payment being made to the same international payee that day.*

*I appreciate Ms J had made other large payments from her account in the previous 12 months, such as £15,000 being paid to HMRC in January 2021. But I can't see any instances of her making two such large transactions in one day or to the same payee. Making multiple large payments to the same payee can often be indicative of fraud, so I think HSBC ought to have spoken to Ms J when she attempted to make the second payment on 27 September 2021.*

*If HSBC had fulfilled its duties by contacting Ms J at this point to ask suitably probing questions, I think it would have discovered that she was likely being scammed. For example, it would have discovered that her husband had been cold called by a company saying it was planning a hostile takeover of the company he held shares in, which ought to have seemed an unusual approach for a company to take if it was legitimate. It would have also discovered that they were being asked to pay a large amount of money upfront in taxes and fees in order to obtain the profits of their sale.*

*I understand that the scam Ms J and her husband fell victim to was uncommon, and that a bank wouldn't necessarily know all the inner workings of a hostile takeover bid and associated share transactions. But it would've still known that you do not pay*

*taxes on shares upfront and would not be expected to do so until you cash in the investment or realise the profit. There was also the fact that Ms J was being asked to pay taxes in multiple payments to the same payee. This is a common hallmark of a scam as it's a tactic often used by fraudsters in an attempt to avoid the detection of larger payments. If it was a legitimate tax payment, it's highly unlikely the relevant authorities would ask for it to be paid across multiple payments instead of all in one go.*

*There is also the fact that Ms J was under the impression that she was paying official fees and taxes to the US (as that was where the scam company was based that was supposedly buying Mr J's shares) yet she was sending all of her money to an account in the Philippines, which would've also appeared highly suspect.*

*So, I'm satisfied there were enough red flags and hallmarks of a scam for HSBC to have realised that Ms J was likely falling victim to a fraudster. And I have no reason to doubt that Ms J would have been forthcoming in telling the bank what she was doing. If HSBC had provided a warning, I believe that Ms J would have paused and sought further advice on the share sale and associated tax obligations. Indeed, I note that she had been in discussions with a financial advisor from HSBC in January 2021 about setting up a discretionary trust. So, HSBC could have invited her to seek advice from her financial advisor, where she would have likely discovered that she was being scammed. So, I'm satisfied that a warning to Ms J from her trusted bank would probably have exposed the scammers false pretences, causing her to stop paying "fees and taxes" for the sale of the shares and preventing further losses. I therefore intend asking HSBC to refund the money Ms J lost from the second payment of £19,500 on 27 September 2021 onwards.*

#### *Contributory negligence*

*Despite regulatory safeguards, there is also a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this instance, I think there were several red flags that ought to have concerned Ms J and led her to suspect she was being scammed.*

*Ms J was told, for example, that she had to pay international clearing fees and agent fees to a New York based company, yet was sending payments to an account in the Philippines. And I note Ms J said herself that she had concerns about this, but it seems she didn't act upon these concerns. I can see there was also correspondence from both the "US Treasury" and the "SEC", both saying they have Mr J's money and will be paying it upon receipt of payment of taxes. I can see that Ms J has previous investment experience, and so I think it ought to have struck her as odd that regulatory bodies such as the SEC would be involved in paying the profits of a share sale for a private company. I can see that the grammar and spelling in some of this correspondence is also poor, which ought to have caused Ms J further concern about their authenticity.*

*Given Ms J has prior investment experience, she could have reached out to a financial advisor to check that everything was legitimate. Indeed, she had around four months of sending different amounts to the scammer to seek further advice but failed to do so despite there being several concerns that something was not right. I understand she had a lot going on at this time, including her husband being ill, which I'm sorry to hear. But in light of the concerns that she failed to act upon, I think it would be fair and reasonable for her to share responsibility for the loss she has sustained. In all the circumstances, I consider it would be fair for HSBC to reduce*

compensation by 50%.

### Interest

*Ms J said she transferred money into her current account from her savings account, where it was then paid to the scammers. And I can see from her statements that money was regularly being transferred in from the same account. She says she was building up funds in her savings towards a Discretionary Gift Trust (which she had spoken to HSBC about in January 2021), but said that many other things took priority over her setting up the trust. So, it's not possible to say when or at what point any of the money would have been paid into the trust.*

*Therefore, given that Ms J was building up funds from within her savings account, I consider it would have most likely remained in this account at the time if she had not fallen victim to the scam. As a result, I intend asking HSBC to pay interest on the compensation at the rate Ms J would have received from her savings account.*

I invited further comments and evidence from both parties. Both Ms J and HSBC responded and accepted the findings made in my provisional decision as well as the proposed redress.

### **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.

Given that both parties have accepted my provisional decision, I see no reason to depart from the conclusions set out above. It follows that I uphold this complaint.

### **My final decision**

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Refund the money Ms J lost to the scam, from the second payment made on 27 September 2021 onwards, less 50% in recognition of her own contributory negligence.
- Pay interest on this amount at the applicable rate she would have received from her savings account, from the date the payments were made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 17 May 2023.

Jack Ferris  
**Ombudsman**