

The complaint

Miss M complains that HSBC UK Bank Plc failed to refund transactions she made as a result of a scam.

What happened

Miss M explained that she fell for a scam through a popular social media platform. She's said one of her friend's accounts was "hacked" and then used to convince her and other friends to invest in crypto currency.

Miss M said the scammer told her she'd make around £10,000 for a small £200 initial investment. Miss M was asked to set up an account with a crypto provider I'll refer to as J.

Once the account was set up, all the following payments were made to J and then sent onwards to another crypto account (that was controlled by the scammers).

In total, Miss M made six payments using her debit card totalling over £6,000 in less than 24 hours.

Miss M described how the scammers manipulated her and harassed her into making additional payments in order to recover her original £200 investment. Various excuses were given to her for more payments to be made including a payment for tax and commission on her "investment".

The following is a table of the disputed transactions:

Date / Time	Amount	Note
20 May 2022 - 08:54 am	£200	Paid to J
20 May 2022 - 11:31 am	£200	Paid to J
20 May 2022 - 3:54 pm	£1,200	Credit paid into a/c
20 May 2022 - 4:01 pm	£1,050	Paid to J
20 May 2022 - 5:14 pm	£1,586	Credit paid into a/c
20 May 2022 - 5:51 pm	£1,586	Paid to J
21 May 2022 - 09:29 am	£1,800	Credit paid into a/c
21 May 2022 - 09:31 am	£1,250	Paid to J
21 May 2022 - 10:58 am	£2,000	Credit paid into a/c

21 May 2022 - 11:02 am	£1,950	Paid to J
Total lost to scam	£6,236	

It wasn't until the final payment that Miss M and her friends realised the investment was a scam. Miss M reported the loss to HSBC and had to have several conversations with them to put her experience across to them.

Miss M believes that because several of the payments were "pending" on her account that HSBC could have prevented some of her losses at the time. She believes that HSBC's delay in dealing with her issue resulted in unnecessary losses.

HSBC looked into the payments and because Miss M had made them herself using her debit card they declined to refund them.

Miss M complained about this and after HSBC again declined to refund the transactions she brought her complaint to the Financial Ombudsman Service for an independent review.

Miss M's complaint was looked into by one of our investigators who asked both parties for information about the situation. Miss M was able to explain that at the time she was feeling vulnerable due to other matters in her life and was taken in by the "hack" of one of her friend's social media accounts.

She said that she never spoke to the scammer and all the contact was through messaging. Miss M didn't produce any exchanges with this person but explained how she was manipulated and harassed into making more and more payments to them in order to get all her money back.

HSBC provided details about the payments and their interaction with Miss M. HSBC accepted that they'd not provided the best service when Miss M first called them and provided £30 compensation to recognise this. They didn't believe they should make any refund due to Miss M making the payments herself.

After considering the evidence it was recommended that HSBC should have identified the unusual pattern of payments moving through Miss M's account and intervened at the fifth payment. The investigator explained that up till that point the transactions wouldn't have been big enough to expect HSBC to have been alerted to the suspicious nature of them. It was also thought that Miss M contributed to her own losses and should bear equal responsibility for her losses.

A refund of £1,600 was suggested including adding interest at the rate of the savings account the bulk of the funds had come from.

HSBC accepted the recommendations, but Miss M didn't. She believed that:

- Because HSBC didn't do anything when the transactions were still in "pending", the final two payments should be refunded in full.
- Miss M later suggested her full loss should be split evenly with HSBC due to their lack of action at the time.
- Miss M questioned the interest rate applied to the refund.

As no agreement could be reached the complaint has now been passed to me for a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards, codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I was sorry to hear of Miss M's loss and the impact this scam has had on her. It's apparent from listening to her calls to HSBC that she was affected greatly by the loss of her funds at the hands of a scammer.

The first matter I need to address is the authorisation of the payments. It's common ground that Miss M made the payments from her debit card to the crypto account set up in her name before being moved to another "wallet". So, even though she didn't intend to pay a fraudster, the payments were 'authorised' under the Payment Services Regulations. HSBC had an obligation to follow Miss M's payment instructions, and Miss M is presumed liable for her loss in the first instance. But that's not the end of the story.

HSBC also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. Although, there has to be a balance struck between HSBC identifying payments that may indicate a customer is potentially at risk of financial harm and then responding appropriately to those concerns – and ensuring minimal disruption to legitimate payments.

There is a voluntary code that applies to some scams (The Lending Standards Board's Contingent Reimbursement Model Code – the CRM Code). But the CRM Code doesn't apply to payments made by card, which is the payment method used in this case, so I can't apply it.

Should HSBC have prevented the payments from being made?

I can only ask HSBC to provide a refund if I consider it has done something wrong and has acted unreasonably. Here that revolves around the use of the account and whether there were unusual transactions compared to how it was normally used that HSBC should have noticed these and intervened.

I agree with the investigator's opinion here that the earlier payments wouldn't have come to the attention of HSBC as they're simply not large enough to reasonably expect them to assess as suspicious.

But, when looking at the pattern of payments over a period of about a day, the picture changes somewhat. In total Miss M moved several thousand from savings into her current account and then moved numerous payments on to J. I think by the fifth payment, the change in character of how the account was used should have been noticed by HSBC. I would have expected them to intervene at that point and as the scam experienced by Miss M was relatively obvious, I think HSBC would have spotted it and prevented further loss. HSBC themselves agreed with this in response to the investigator's report.

Should Miss M share some of the loss from the final two payments herself?

When deciding what should be refunded by HSBC, I also have to take into account the actions of Miss M. Was it reasonable for her to make payment after payment in order to retrieve her initial investment of £200 plus whatever she was told she would make as an “investment”?

Contributory negligence can be described as “...*a lack of care on the consumer’s part that goes beyond what we would expect from a reasonable person.*”

I haven’t been able to examine the detail of the arrangement between Miss M and her friend and have assessed the complaint based on her testimony. It appears that Miss M was initially convinced to invest £200 and receive around £10,000 profit over a very short period of time. On its own this appears to be a fantastic return for a very small investment. I don’t think the basic premise of the investment was plausible, nor the various reasons given for paying more and more to the scammer in order to receive her initial money back and whatever profits she believed she was due.

There also doesn’t appear to have been any agreement or structure to the investment. Miss M hasn’t said if she carried out any research into the investment and based on her testimony that it was a friend’s account that had been hacked, it seems as though that person had become a crypto investment trader.

Miss M said she was harassed and manipulated into making these payments. I don’t doubt she was stressed as a result of the scam, but I did find it unusual that she didn’t earlier question these practices from someone she already knew, it didn’t sound like the actions of someone she knew.

I’d like to make it clear that the scammer was responsible for the fraud against her and the loss of her funds. But, I do think the whole premise of the investment was questionable and her actions to keep paying funds to the scammer weren’t based on any plausible basis.

I understand Miss M believes she was vulnerable at the time of the scam due to other factors in her life. It’s clear she was stressed as a result of the situation although I don’t believe that HSBC were aware of any particular vulnerabilities at the time of the scam. I don’t think they could have put in any other measure to protect Miss M.

So, I do think that Miss M should share in some of the losses from the final two payments herself and I think it’s fair and reasonable for that both parties share the loss equally of the final two payments.

I appreciate Miss M thinks all the payments should be considered as unusual, but as I’ve already pointed out, the earlier payments weren’t something I’d expect HSBC to stop. That means I don’t consider they should have done anything and as Miss M authorised them herself, I won’t be asking HSBC to do anything further regarding the first four payments.

Miss M has also argued that HSBC could have prevented some of the payments as they were still “pending” when she notified them about the issue. But, once the payments had been authorised by Miss M, those funds are no longer available to HSBC. When it says “pending” it means the process to move the funds into the merchant’s accounts hasn’t yet been completed and is waiting for the merchant to complete their own processes. Unfortunately, HSBC can do little at that point. So, I don’t think it would be fair to say that HSBC missed an opportunity to stop the payments because they’d already been authorised by that point.

Miss M experienced poor customer service due to long hold times and having to be passed to various personnel at HSBC. They accepted this and paid Miss M £30. I don't intend to change that as I think this was a reasonable way to recognise that particular aspect of their dealings with Miss M.

Putting things right

HSBC should now pay Miss M £1,600 being 50% of the final two payments. Interest at the account rate from where the funds originated should be added from the date of the loss to the date of repayment.

My final decision

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

If HSBC considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 September 2023.

David Perry
Ombudsman