

The complaint

Miss N complains that HSBC UK Bank Plc didn't do enough to prevent the loss she suffered when she sent money to an HSBC account as the result of a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In October 2021 Miss N was the victim of an investment scam. She sent two payments of €10,000 and €40,000 on 9 and 11 October 2021 respectively. At the time she believed she was dealing with a legitimate investment firm I'll refer to as 'W'. Both payments were sent from her own bank 'S' which is based outside the UK.

Soon after the payments had been made, W stopped responding to Miss N and she realised she may have fallen victim to a scam. S managed to recall the €10,000 payment on Miss N's behalf. Miss N later complained to HSBC, seeking to recover the outstanding €40,000. HSBC said that they'd acted appropriately in relation to the account and the matter was referred to our service.

One of our Investigators recommended that the complaint should be upheld. He thought HSBC should refund Miss N's outstanding loss and pay 8% simple interest. Miss N accepted this outcome, but HSBC didn't. As such, the complaint was passed to me to decide. In January 2024 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached a slightly different outcome to that of our Investigator. So, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.

Miss N's €10,000 payment credited the HSBC account as £8,298.05 on 12 October 2021. And I can see from the statements that the same amount was returned to her from that account on 27 October 2021. Miss N has confirmed that she hasn't recovered any of the €40,000 payment from her own bank or any other source. Due to this I'll mostly keep my findings to the outstanding loss which arises from the €40,000 payment. This payment credited the HSBC account as £33,193.12 also on 12 October 2021. It's unclear why one recall was successful and the other wasn't. But I don't need to establish why to fairly decide this complaint. There are other reasons why I think HSBC should refund the outstanding loss.

HSBC should try to prevent fraud and scams where they can. And whilst I accept HSBC has no contractual or customer relationship with Miss N, if HSBC have failed in such a way that can be fairly said to have caused the outstanding loss, I think it is fair and reasonable for that to be put right.

There was activity on the account that Miss N paid, prior to the arrival of either of her payments that I think HSBC ought to have identified and investigated. Had they done so, I think they would have realised that the account was likely being used to receive fraudulently obtained funds, and they should have taken action to prevent this continuing. So by the time Miss N's payments were made, it's most likely they would have arrived in a blocked account and been available for recovery in full. So based on this, I think HSBC should pay Miss N her outstanding loss.

I've considered whether Miss N too should bear some responsibility for her own loss due to contributory negligence. And in the circumstances here, I'm not persuaded she should. Miss N has described how she heard about the investment with W from her brother-in-law, who at the time, had what appeared to be a successful investment with them. I've seen no evidence to support that Miss N was aware of any online warnings about W at the time, her testimony is that she wasn't aware and had relied on what she'd been told by her brother-in-law. Similarly she's said that no warnings were provided by S when she sent the payments. I have no reason to doubt Miss N's testimony and I'm not persuaded that when making the payments she knew or reasonably ought to have suspected something was amiss, but continued despite this, meaning that a reduction in award would be fair in the circumstances of this case.

As I think that, but for HSBC's inaction in relation to their account, Miss N wouldn't have been without her funds for so long, I think that interest is also payable. It's apparent from the details of the scam that Miss N was looking to invest her funds. The 'scam' investment was for a fixed term with a guaranteed return. That leads me to conclude that Miss N most likely wouldn't have wanted to put her funds into investments with any meaningful level of risk. And in these circumstances, I think it is appropriate to look to the rates published by the Bank of England showing the average return from one-year fixed rate bonds. These are the average rates that banks and building societies are advertising for fixed term, fixed rate deposit accounts. I'm not saying this is exactly how Miss N would have invested her money, but it represents the sort of return she would have achieved with no/little risk to her money. Details of the rates available each month for the relevant years can be found on [this link](#). I think it's most likely that it would have taken a couple of weeks for the return to have been arranged. As such, I'm intending to direct that interest should be paid from 27 October 2021 until the date of settlement to reflect this.

Putting things Right

HSBC should pay Miss N an equivalent amount of euros had £33,193.12 been returned on 27 October 2021 using the exchange rate in place on that date.

HSBC should also calculate and pay the interest Miss N would have received had she invested that amount for 12 months using the rate available from the Bank of England's average return from one-year fixed rate bonds at that time. This interest should be compounded and calculated again each year between the 27 October 2021 and the date of settlement, using the applicable interest rate for each further 12-month investment."

Miss N responded to say she accepted my provisional decision. HSBC responded and said they had nothing further to add.

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 neither party had any further evidence or comments for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must take the steps set out at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 6 March 2024.

Richard Annandale
Ombudsman