

The complaint

Mrs W is unhappy that HSBC UK Bank Plc has refused to refund all the money she lost after falling victim to a romance scam.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

Mrs W was contacted by a person – who I will refer to as A - through a social media platform. She believed they were in a romantic relationship. After a couple of weeks, A told Mrs W he had a substantial amount of money in a safety deposit box and needed help from Mrs W to release it. Mrs W made several transfers towards the release of the box and for medical expenses for A's son. Mrs W began giving A money on 7 July 2021 and I have detailed the transactions within my findings below.

On 14 July 2021, Mrs W visited a branch and attempted to make a payment of £6,000.00, but branch staff refused to make the payment as they held concerns that Mrs W was being scammed. Within an hour Mrs W visited a second branch and withdrew £6,000 in cash. HSBC agreed that it didn't do enough at this point and refunded this and some of Mrs W's later transactions.

Our investigator upheld the complaint and recommended HSBC should refund an additional three transactions, totalling £9,200. Mrs W accepted the conclusions, but HSBC did not agree.

I issued my provisional decision on 26 October 2023. Both parties accept my provisional 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, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

I think there has been a misunderstanding or miscalculation with the transactions that occurred here. Having reviewed everything – I believe the following transactions took place in relation to this scam.

Date	Payment	Payment prevented	Reason	Type
06/07/2021	£2,500	£2,500	SMS not completed	mobile
07/07/2021	£2,500			cash
13/07/2021	£6,000	£6,000	additional checks	mobile
14/07/2021	£6,000			cash
30/07/2021	£5,000	£5,000	incorrect account details	mobile
30/07/2021	£5,000			mobile
31/07/2021	£2,100			mobile
02/08/2021	£2,100			card
09/08/2021	£25,000			mobile
10/08/2021	£25,000			mobile
11/08/2021	£25,000			mobile
23/08/2021	£25,000			mobile
24/08/2021	£25,000			mobile
03/09/2021	£4,000			mobile

total payments	£160,200	£13,500
loss to scam		£146,700
refunded by HSBC		£135,000
outstanding loss		£11,700

HSBC has already upheld the transactions in yellow (the darker/greyed-out transactions are those that were attempted and prevented). I understand £135,000 was refunded to the customer via her representative on 25 January 2023.

So, I am looking at the four unhighlighted transactions. The CRM code only covers Authorised Push Payments (APPs) and does not cover cash withdrawals, card payments, international payments or transfers to an account in Mrs W's own name.

Outside of the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's 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 that its customers were at risk of fraud (among 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- For branch transactions, such as the ones on 7 and 14 July 2021, follow the Banking Protocol where appropriate.

The first transaction for £2,500 on 7 July 2021 was a cash withdrawal from a branch. It seems from HSBC's internal notes, staff did question Mrs W and she confirmed she hadn't been coerced and was adamant it was a legitimate transaction. I think the checks were proportionate to the sum involved here and due to the fact that the transaction didn't look unusual or suspicious based on the account history. So, I don't think HSBC did anything wrong when allowing Mrs W to make the withdrawal.

However, HSBC has agreed it should have been concerned by the time Mrs W made the £6,000 on 14 July 2021. I agree.

The previous day Mrs W had attempted to make the payment by her mobile banking and the payment was stopped for checks. HSBC was unsuccessful in contacting Mrs W over this payment, so it reversed it. The following day Mrs W attended a branch to try to take £6,000 out in cash. But staff were concerned this was a scam and refused to make the payment. Staff noted she was vague in her answers, didn't know who the beneficiary was, and she had explained that she was paying on behalf of someone she'd met online. A note was left on the account internal fraud notes indicate Mrs W was noted as being 'PVC' – which I take to mean a 'potentially vulnerable customer'. However, 40 minutes later, when Mrs W tried to make the same cash withdrawal at a different branch HSBC did not, by its own admission, do enough to prevent the scam.

This is the point at which HSBC ought to have intervened and prevented the scam. HSBC has accepted that. It follows that all subsequent payments would not have been made and therefore any further losses prevented. This means all transactions from 14 July 2021 onwards should be refunded. This includes the card payment on 2 August 2021. The subsequent online warning(s) would not have been enough, in my view, to break the chain in causation.

Putting things right

In order to put things right for Mrs W, in addition to the £135,000 HSBC has refunded, HSBC should:

Refund the three transactions from 30 July 2021 to 2 August 2021 inclusive – that is £9,200. As Mrs W has been deprived of the use of this money, HSBC should add 8% simple interest from the date of each transaction to the date of settlement.

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

My final decision

My final decision is that I uphold this complaint in part and require HSBC UK Bank Plc to put things right for Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 November 2023.

Kathryn Milne
Ombudsman