

The complaint

Ms Q complains HSBC UK Bank Plc (HSBC) won't refund all the money she lost when she was scammed.

What happened

In October 2022, Ms Q was contacted via a messaging app about a cryptocurrency investment opportunity. She was added into a group with others who were trading, some of whom appeared to be doing so successfully. She decided to invest. She was instructed to set up cryptocurrency wallet(s), which she credited from her HSBC account, to purchase cryptocurrency to send on to the trading platform.

A few days later, Ms Q was contacted again, on another messaging app, about a job opportunity. Similarly, she was added to a group with others taking part. She understood the role was to promote the tourism industry, and it involved selecting or inputting data on a website. She thought she had to pay cryptocurrency to earn/claim her commission, so again sent funds from HSBC via her wallets. Overall, Ms Q sent around £15,000 via her wallets over a period of around two weeks.

In early November 2022, Ms Q reported to HSBC that she had fallen victim to a "multi-layered" scam. She complained it should have realised the payments were suspicious and uncovered that she was being scammed. HSBC didn't agree to refund her, arguing the loss was incurred when she transferred the money on from the wallets she paid directly. But it paid £50 compensation for delays responding to her dispute. Unhappy with this response, Ms Q referred the matter to our service.

Our investigator didn't think most of the payments looked suspicious enough to conclude HSBC ought to have had concerns. But he thought the fifth payment on the final day of the disputed payments (the 18th scam payment overall), for £3,500, should have prompted HSBC to have completed further checks – and that if it had done so, the scam would have been unravelled. He recommended HSBC should refund Ms Q's loss from that payment, with a 50% deduction for her role in what happened.

HSBC accepted this outcome but Ms Q didn't agree, so the case has been referred to me. In summary, she says the bank has different systems now including limiting cryptocurrency transactions, and she doesn't think it has taken accountability.

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.

Having done so, I agree with the conclusions reached by the investigator. I'll explain why.

In line with the Payment Services Regulations 2017, HSBC is expected to execute authorised payment instructions without undue delay. It's accepted Ms Q authorised the payments she is disputing, albeit she did so due to being tricked by a scam. So the starting position is that she is liable for them.

That said, there are circumstances when it might be appropriate for HSBC to take additional steps before processing a payment. Such as when there are grounds to suspect it presents a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account. And/or if the account activity fits a known pattern of fraud.

Looking at the account activity, I do accept there was a change in how Ms Q transacted. All the payments occurred within a period of two weeks, and she sent in the region of £15,000. That was more than she normally spent. However, the payments started off for lower amounts, with some gaps of days in between. So I don't think HSBC immediately had cause to suspect Ms Q was falling victim to a scam.

But on the last day Ms Q made these scam payments, I think their frequency and value reached a point where the change in activity was significant enough that HSBC ought to have had concerns. I think the fifth payment that day, as identified by the investigator, is a reasonable point to conclude HSBC should have intervened.

By then, there had been several payments to the same cryptocurrency payee within a day. While some were for (relatively) small amounts, they included a significant payment – for almost £2,500. So, when Ms Q went on to pay a further £3,550, I think HSBC ought to have been concerned about why she was paying so much more than she had paid prior, and over so many payments.

If HSBC had questioned Ms Q about what she was doing, I agree with the investigator's conclusion, which hasn't been disputed, that she likely would have explained about the work she thought she was undertaking – as she did when she reported the scam a week later. And I think HSBC would have recognised that, where she was being asked to pay cryptocurrency to earn money, it wasn't a legitimate job.

By this point, it was towards the end of the scam. Ms Q realised herself it wasn't legitimate shortly after. So, I think a conversation around what she was doing, and a warning about the common cryptocurrency-related scams HSBC was seeing, would have succeeded in "breaking the spell" of the scam and preventing her from incurring further fraudulent losses.

I appreciate Ms Q is unhappy HSBC didn't do more, noting changes it has made to its systems and processes since these events (such as limiting how much can be sent to cryptocurrency exchanges/wallets within a certain period). However, while it has now made this commercial decision, seemingly due to concerns about cryptocurrency fraud, I can't hold it to these standards retrospectively. There was no requirement on HSBC, through its own policy or otherwise, to limit cryptocurrency payments at the time.

Overall, while I agree HSBC ought to have identified a fraud risk due to the account activity, I don't think it would be fair to hold it at fault for not looking into the payments further *until* the payment of £3,550. So it's from that point I've concluded HSBC holds liability for Ms Q's loss.

I must also consider whether it would be fair to expect Ms Q to share some liability for those losses which I've found HSBC ought to have prevented. I'm conscious Ms Q received unexpected and unsolicited contact through messaging apps about the scam(s), which is at odds with what you might reasonably expect for a genuine investment scheme or job.

Ms Q has confirmed she didn't receive a contract for the work she understood she was being employed to undertake, again as you would normally expect for a legitimate job. In those circumstances, I think it ought to have caused Ms Q concern that she was being asked to pay money, in cryptocurrency, to earn/receive commission for the work. In the circumstances, I consider it fair to reduce the compensation by 50% to reflect her contributory negligence.

HSBC has already paid £50 compensation for the distress and inconvenience caused to Ms Q due to service failings while looking into her dispute. Our investigator concluded this compensation – which is separate to her financial loss to the scam – was fair. And I can't see that's been contested, nor have I seen anything which persuades me more compensation is due for the non-financial impact on Ms Q of any service failings by HSBC. I'm therefore not making a further award for Ms Q's distress and inconvenience.

I do have sympathy with Ms Q's situation. She has clearly lost a large amount due to the cruel actions of the scammers, so I can see why she feels strongly about pursuing this matter. But what I'm considering is what level of blame HSBC, as her bank, holds for what happened.

I've carefully considered this point. While I think HSBC does hold some blame for failing to identify the fraud risk, and so should refund some of Ms Q's loss, I don't think it would be fair to expect it to refund more than the investigator proposed. Which is half of Ms Q's loss from the payment I think HSBC should have intervened on. I also consider it reasonable to expect it to pay interest to compensate Ms Q for the loss of use of the funds.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must refund Ms Q 50% of the loss she incurred to the scam from the payment of £3,500 onwards. It must pay 8% simple interest per year on this amount, from the date of payment to the date of settlement, less any tax lawfully deductible.

HSBC UK Bank Plc must pay this compensation within 28 days of the date on which we tell it Ms Q accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 3 May 2024.

Rachel Loughlin
Ombudsman