

The complaint

Ms F complains that HSBC UK Bank Plc (HSBC) is refusing to refund her the amount she lost as the result of a scam.

Ms F is being represented by a third party. To keep things simple, I will refer to Ms F throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, around December 2022 an individual (X) contacted Ms F via WhatsApp. Ms F did not know X, but a conversation started between the two. Ms F soon realised she had things in common with X and a friendship started to form.

X explained she was an expert in trading Bitcoin and had made good returns via the website innovationfxm.com (Y) and persuaded Ms F that she should do the same. X helped Ms F setup an account, where she was required to provide identification documents, and walked her through the process of investing.

Ms F was able to see the money she had invested appear on a professional looking trading platform and could see she was making a steady profit.

Ms F requested a withdrawal from her account but was given multiple reasons she would have to make further payments first. After making several payments in relation to the withdrawal process Ms F was consistently asked to make further payments and having visited a HSBC branch realised, she had fallen victim to a scam. HSBC told Ms F that she should not make any further payments.

Some time passed and Ms F was contacted again by Y who explained X had lost her job due to mishandling Ms F's account. Y then persuaded Ms F to make further payments to release the funds from her investment account. But Ms F never received a withdrawal and realised she had been scammed again.

Ms F made the following payments in relation to the scam from her account with HSBC:

Date	Payee	Payment Method	Amount
13 December 2022	Moonpay	Debit Card	£1,500
14 December 2022	Moonpay	Debit Card	£500
15 December 2022	Moonpay	Debit Card	£450
16 December 2022	Moonpay	Debit Card	£1,000
16 December 2022	Moonpay	Debit Card	£350
20 Decemebr 2022	Moonpay	Debit Card	£500
20 December 2022	Moonpay	Debit Card	£500
2 February 2023	Moonpay	Debit Card	£500
2 February 2023	Moonpay	Debit Card	£300

3 February 2023	Moonpay	Debit Card	£350
3 February 2023	Moonpay	Debit Card	£350
3 February 2023	Moonpay	Debit Card	£150
3 February 2023	Moonpay	Debit Card	£50
3 February 2023	Moonpay	Debit Card	£200
3 February 2023	Moonpay	Debit Card	£150
3 February 2023	Moonpay	Debit Card	£100
3 February 2023	Moonpay	Debit Card	£2,000
3 February 2023	Moonpay	Debit Card	£1,000
4 February 2023	Moonpay	Debit Card	£1,800
4 February 2023	Moonpay	Debit Card	£2,000
4 February 2023	Moonpay	Debit Card	£500

Our Investigator upheld Ms F's complaint in part. HSBC agreed but Ms F didn't, so this complaint has been passed to me to decide.

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.

It has not been disputed that Ms F has fallen victim to a cruel scam. The evidence provided by both Ms F and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Ms F lost due to the scam.

Recovering the payments Ms F made

Ms F made payments into the scam via her debit card. When payments are made by card the only recovery option HSBC has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Ms F was dealing with X, which was the person that instigated the scam. But Ms F didn't make the debit card payments to X directly, she paid a separate cryptocurrency exchange (Moonpay). This is important because HSBC would only have been able to process chargeback claims against the merchant she paid (Moonpay), not another party (such as X).

The service provided by Moonpay would have been to convert or facilitate conversion of Ms F's payments into cryptocurrency. Therefore, Moonpay provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Ms F paid.

Should HSBC have reasonably prevented the payments Ms F made?

It has been accepted that Ms F authorised the payments that were made from her account with HSBC, albeit on X's instruction. So, the starting point here is that Ms F is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have been aware of the scam and stepped into question Ms F about the payments she was making. And if it had questioned Ms F, would it have been able to prevent the scam taking place.

The first payments Ms F made into the scam were all for relatively low values and were being made to a legitimate business. It wouldn't be reasonable for me to say HSBC should step in every time one of its customers makes relatively low value payments to genuine businesses.

But by the time Ms F made the £2,000 on 3 February 2023 she was making her eighth payment of the day to the same payee, which was also a cryptocurrency exchange, bringing the total she had sent in one day to over £3,000. Considering HSBC's knowledge of cryptocurrency scams at the time the payment was made I would have expected HSBC to step in and question Ms F about the payments.

I have not seen anything to make me think Ms F would not have been honest if questioned by HSBC as I think she should have been. So, I think HSBC would have likely found that Ms F had been investing with someone that had messaged her randomly and investing with Bitcoin. It would likely have also found that Ms F had been asked to make additional payments to release her profits. I think this information would have been a concern to HSBC and it would likely have uncovered the scam and prevented any further loss.

HSBC is therefore responsible for Ms F's loss from the payment she made of £2,000 on 3 February 2023.

Did Ms F contribute to her loss?

Despite regulatory safeguards, there is 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 the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Ms F should share blame for what happened. By the time Ms F made the payments in February 2023 she had already had conversations with HSBC where it had been found payments made in relation to the investment were likely scam related. While HSBC may not have given Ms F specific warnings about making future payments, I think that when a different representative from the same business contacted her requesting further payments this should have caused her concern, and I think Ms F should have taken more care before agreeing to make the further payments that were requested from her.

Putting things right

To put things right I require HSBC UK Bank Plc to refund Ms F the payments she made in relation to the scam from the payment that was made on 3 February 2023 for £2,000 less 50%. HSBC UK Bank Plc should add 8% simple interest to the amount it pays Ms F from the date the payments were made to the date it makes the settlement (less any lawfully deductible tax).

My final decision

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've

outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 25 April 2024.

Terry Woodham
Ombudsman