

The complaint

Mrs W complains that HSBC UK Bank Plc (“HSBC”) won’t refund over £7,000 she says she lost to an investment scam.

What happened

Mrs W fell victim to an investment scam orchestrated by the scam broker “Profit Trade”. She found the broker online and was contacted via telephone, where she was encouraged to invest and made the following payments:

Date	Amount	Payee	Payment type
24 May 2019	£260.04 (<i>refunded by merchant on 4 June 2019 – no loss</i>)	Profit Trade	Credit card
12 June 2019	£518.49	Profit Trade	Credit Card
27 June 2019	£500	RavebyFlutterwave	Debit Card
27 June 2019	£500	RavebyFlutterwave	Debit Card
28 June 2019	£500	RavebyFlutterwave	Debit Card
12 July 2019	£5,000	Polter Group Spolk	International transfer

Mrs W realised she had been scammed when she was unable to withdraw any of her profits and reported the fraud to HSBC in October 2019, where she asked it to pursue a chargeback. HSBC said it issued a final response on 20 November 2019 in relation to the credit card payment of £518.49, where it told Mrs W that she had six months in which to refer her complaint to this service – that is by 20 May 2020. However, Mrs W didn’t refer her complaint until August 2020, and HSBC didn’t consent to our service considering this payment.

Our investigator said that, as HSBC had only addressed the credit card payment in its November 2019 final response, it could not time bar any of the other payments Mrs W had complained about.

In addressing the merits of the complaint, our investigator thought that HSBC should have intervened in the £5,000 payment made on 12 July 2019 as it ought to have appeared out of character. However, she didn’t think that any intervention would have ultimately prevented Mrs W from making the payment due to the research she had undertaken about the broker. Mrs W disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in October 2023. I said I was minded to uphold it and set out the following reasons:

Jurisdiction

If a business doesn't consent, I'm not allowed to consider a complaint which is referred to us more than six months after the date the final response letter is sent. Dispute Resolution rule 2.8.2R(1) can be found in the regulators' handbook of rules and guidance.

I understand Mrs W feels strongly about her complaint and doesn't feel she's been treated fairly. But our rules don't permit us to investigate the merits of late complaints unless a business consents or there are exceptional circumstances for the delay. I cannot disregard the rules, even where someone feels very strongly they've been wronged. HSBC hasn't consented to us looking into the disputed credit card payment aspect of Mrs W's complaint, so the only thing I'm able to consider in relation to this is whether this part of her complaint is late and, if so, whether there were exceptional circumstances for the delay.

HSBC sent its final response on the credit card payment on 20 November 2019 where it told Mrs W that she could refer her complaint to this service, but that she must do so within six months of the date the final response was sent. This meant that Mrs W had until 20 May 2020 to refer her complaint to us. As she didn't do so, this part of Mrs W's complaint is out of time under the rules that apply.

I am, however, allowed to consider complaints made late where the failure to comply with the time limits was due to exceptional circumstances. I am aware that Mrs W has been suffering from mental stress and emotional hardship since falling victim to the scam, and I don't doubt that this has been a difficult time for her. However, I've not seen any persuasive evidence to demonstrate why she wouldn't have been able to refer the complaint about her credit card payment to this service within six months of HSBC's final response letter. So, I do not consider this to be an exceptional reason for this part of her complaint being referred late.

As a result, I intend to conclude that our service cannot consider the disputed credit card transaction of £518.49 and whether HSBC should have refunded this, which includes undertaking any chargeback or Section 75 claims. However, given this was the only transaction addressed by HSBC in its final response, I'm satisfied that Mrs W is not time-barred from complaining about the remaining transactions set out in the table above.

Merits

It isn't in dispute that Mrs W has fallen victim to a scam here, nor that she authorised the disputed payments she made between 27 June 2019 and 12 July 2019 from her HSBC account and debit card. The payments were requested by her using her legitimate security credentials provided by HSBC, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether HSBC should have done more to prevent Mrs W from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

Having reviewed the first three payments made by Mrs W, I don't think these were enough in themselves to have warranted an intervention by HSBC. All were for £500, which wouldn't have appeared so unusual as to amount to a significant deviation in

the way her account was normally run. So, I don't intend asking HSBC to refund these payments.

However, by the time Mrs W came to make the international payment of £5,000 on 12 July 2019, this marked a significant increase in spending and could be considered as out of character given it was also being paid to a new international payee. So, I think HSBC ought to have intervened and questioned Mrs W about this payment.

If HSBC had carried out reasonable due diligence by contacting Mrs W and asking suitably probing questions, there is no reason to suggest she wouldn't have been forthcoming about what she was doing. Our investigator stated that Mrs W had carried out extensive research into the merchant. However, when questioned further, it became clear that this only related to reading positive testimonials on the scammer's website. She has not said that she consulted any other sources online at the time, of which I note there were several websites and reviews stating that Profit Trade was a scam prior to Mrs W making her payments.

If HSBC had given a warning, I believe that Mrs W would have paused and looked more closely into Profit Trade before proceeding. There is no evidence that she was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that she would have made further enquiries into the merchant and whether or not they were regulated in the UK or abroad. Mrs W could have also discovered the other various warnings about the broker posted on review websites such as Trustpilot. In other words, I am satisfied that a warning from HSBC would probably have exposed Profit Trade's false pretences, thereby preventing further losses. As a result, I intend directing HSBC to refund the £5,000 payment Mrs W made on 12 July 2019.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mrs W should bear some responsibility by way of contributory negligence, which I'm satisfied she should in this case.

As I've set out above, Mrs W says she carried out extensive research on Profit Trade, but only considered the positive testimonials featured on the scammer's own website. I don't consider this to have been sufficient due diligence to ensure that the broker was genuine, as it doesn't appear that Mrs W consulted any independent or impartial sources. If she had, she would have likely come across the various warnings and reviews from others who had been scammed by Profit Trade at the time and would have therefore been much less likely to invest her money with them.

Therefore, I'm satisfied that Mrs W's lack of due diligence contributed to her loss such that she should share responsibility with HSBC, and I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

Mrs W has also complained that HSBC failed to pursue a chargeback claim for the payments she made via her Visa debit card. I note that Mrs W did dispute the debit card payments within the 120-day timeframe. However, I've not seen sufficient evidence to suggest that a chargeback would have likely been successful under Visa reason code 13.5 if it had been pursued.

In order for a chargeback to succeed in these circumstances the Visa rules require

HSBC to present evidence that Mrs W had an available balance, and that she tried to withdraw sums equal to, or less than, her available balance on the same day. Visa require specific evidence in the form of dated screenshots on the day the withdrawal was requested, and I haven't seen any such evidence of this kind in Mrs W's case. Therefore, I do not think HSBC acted unreasonably by declining to pursue a chargeback in these circumstances.

In terms of the £5,000 international payment, I can see that HSBC attempted to recover the funds by reaching out to the beneficiary bank in November 2019, but it doesn't seem there was any response. In any event, given the payment was made in July 2019, it would be highly unlikely that any funds would have still remained in the receiving account by the time Mrs W reported the fraud. So, I don't think HSBC could have done anything more here to try and recover the funds.

I note that Mrs W has also mentioned the Contingent Reimbursement Model (CRM Code). However, the Code only applies to authorised push payments, and so would not cover any of the debit card transactions she made. It also only applies to transfers made between GBP-denominated UK-domiciled accounts. In this instance, the £5,000 payment was made to an international account, so the CRM Code would not apply to this transaction either.

I invited further comments and evidence from both parties. HSBC said it had no further comments to make. Mrs W responded and accepted my provisional findings.

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.

Given that neither party had any further comments or evidence to submit, I see no reason to depart from the reasons set out above in my provisional decision. It follows that I uphold this complaint.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Refund the £5,000 payment Mrs W made as part of the scam, less a deduction of 50% in recognition of her own contributory negligence towards her loss.
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 November 2023.

Jack Ferris
Ombudsman