

The complaint

Ms K, via a representative, complains that HSBC UK Bank Plc (“HSBC”) won’t refund the money she lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here.

Ms K met an individual that I will call B on a dating website. After gaining her trust he persuaded her to invest in a company that I will call C.

Ms K was persuaded to invest and was provided details of a customer portal to see her “investments”. She then made a number of card payments from her HSBC account to a crypto exchange where the funds were then converted into crypto and sent to C.

Ms K made the following payments from her HSBC account

Transaction Number	Date	Amount
1	13 October 2021	£1,053.99
2	14 October 2021	£1,047.57
3	14 October 2021	£1,027.64
4	5 November 2021	£12,892.14
5	15 November 2021	£15,383.01
6	6 December 2021	£5,288.79

Ms K realised she had been scammed when she was asked to pay a verification fee to access her funds.

She raised a complaint with HSBC and requested that she be refunded the above transactions. HSBC declined to do this.

Our investigator upheld the complaint in part. He thought that HSBC ought to have intervened during transaction 4. The investigator thought, had that happened, the scam would likely have been stopped. Therefore, the investigator said that HSBC should pay 50% of the loss after this point. He said this because he thought that HSBC and Ms K were each responsible for 50% of the loss. So, there should be a deduction of 50% in recognition of Ms K’s own contributory negligence. HSBC did not agree with this and requested that this case be reviewed by an ombudsman.

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 isn't in dispute that Ms K has fallen victim to a scam here, nor that she authorised the disputed payments she made to B (where her funds were subsequently transferred on to the scammers). 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 Ms K 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 for that account holder.

I understand the investigator considered payment 4 ought to have been regarded as unusual, given that it was a large payment and was to a crypto exchange. In my view this really should have been flagged by HSBC as being unusual account activity, given the transaction history on the account. So, I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by HSBC.

Had HSBC intervened at this point and asked Ms K probing questions, like why was she making the payment, who had introduced her to the investment and was she sending funds from her crypto account to a third party, I think it would have likely have become apparent that what Ms K was doing had the signs of a crypto investment scam. I think that had HSBC explained this to Ms K, she would not have carried on with the transactions in question.

HSBC says that as Ms K misled it about the purpose of the personal loan that she took out as she said it was to purchase furniture rather than for an investment, it argues that Ms K would likely have also misled HSBC about the nature of the payments, had it intervened. I have carefully considered this and have read the correspondence between the scammer and Ms K. I can't see at any point that the scammer told Ms K to lie if questioned by HSBC or that she was provided with a cover story. I also think that it is unlikely that she would be able to say she was buying furniture with crypto if she was questioned directly about the payments. Finally, I note that Ms K was borrowing funds around this point from family, friends and HSBC to send to B. So I think that a warning would have been taken more seriously as this was not money that she could afford to lose.

So I think that HSBC should have provided a warning at payment 4 and this would have, in all likelihood, stopped the scam. I am therefore concluding that HSBC's failure to provide a warning led to Ms K's loss.

As a result, I believe HSBC should refund the payments Ms K lost to the scam from transaction 4.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Ms K should bear some responsibility by way of contributory negligence. In the circumstances, I'm satisfied she should do so in this case.

In the circumstances, I don't think that it is reasonable that Ms K sent a considerable amount of money to make an investment based on the advice of someone she had never actually met. She also misled HSBC about the reasons why she needed a personal loan. Ms K's decision to mislead HSBC about the purpose of the loan caused her to lose even more money than what she would've done, had she been honest what she wanted the loan for.

Therefore, I'm satisfied that Ms K contributed to her loss, such that she should share responsibility for the loss with HSBC. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether HSBC could have done more to attempt to recover the payments after Ms K reported the fraud. But the Contingent Reimbursement Model ("CRM") does not apply to debit card payments and so I can't say that the CRM does apply to the transactions in question.

I also don't consider HSBC ought to have attempted a chargeback claim, as Ms K made payments to her own crypto account for the purchase of crypto and she seems to have received this before she forwarded it on to C. So, she got what she paid for. It was only when Ms K transferred the crypto from her wallet on to C, did the loss occur.

Putting things right

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

- Refund the payments Ms K lost to the scam from and including transaction 4 onwards minus any already refunded. Then reduce this by 50% in recognition of Ms K's own contributory negligence towards her loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

My decision is that I uphold this complaint in part and require HSBC UK Bank Plc to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 4 July 2024.

Charlie Newton
Ombudsman