

## The complaint

Miss R complains that HSBC UK Bank Plc (HSBC) won't refund money she lost in an investment scam.

## What happened

Miss R is represented by a third-party claims firm, but I will refer to Miss R as the complainant here.

### *What Miss R says:*

In February 2023, Miss R met someone on an online dating website. He proved to be a scammer.

She exchanged WhatsApp messages with him and struck up a close online/messaging relationship. The scammer, who lived abroad, said he had a property near her hometown in the UK and would visit her soon. They planned to meet up and make a life together.

After a while, he said he was making a lot of money from crypto currency investments and introduced Miss R to the idea of investing herself. He said the potential return was 20%. He coached her to open a crypto wallet account and she made 22 payments totalling £67,350. She used all her savings and also took out two loans to fund the payments. **(continued)**

The payments were:

Date	Payment	Amount	Credits
1 March 2023	Debit card – crypto wallet	£2,500	

2 March 2023			Savings - £5,300 (two credits)
5 March 2023	Debit card – crypto wallet	£100	
5 March 2023	Debit card – crypto wallet	£1,000	
5 March 2023	Debit card – crypto wallet	£1,000	
5 March 2023	Debit card – crypto wallet	£1,100	
5 March 2023	Debit card – crypto wallet	£1,000	
7 March 2023	Debit card – crypto wallet	£2,500	Savings - £6,000
8 March 2023	Debit card – crypto wallet	£2,500	Savings - £1,000
8 March 2023	Debit card – crypto wallet	£1,000	
	Debit card – crypto wallet	£2,500	Savings - £5,000
12 March 2023	Debit card – crypto wallet	£2,500	
14 March 2023	Debit card – crypto wallet	£5,000	Savings - £5,000
15 March 2023	Debit card – crypto wallet	£5,000	Savings - £5,000
25 March 2023	Debit card – crypto wallet	£5,000	Savings - £7,000
25 March 2023	Debit card – crypto wallet	£2,000	
1 April 2023	Debit card – crypto wallet	£5,000	Loan – £20,000
2 April 2023	Debit card – crypto wallet	£5,000	
3 April 2023	Debit card – crypto wallet	£5,000	
4 April 2023	Debit card – crypto wallet	£5,000	
11 April 2023	Debit card – crypto wallet	£5,000	Loan - £12,000
11 April 2023	Debit card – crypto wallet	£5,000	
11 April 2023	Debit card – crypto wallet	£2,650	
<b>Total</b>		<b>£67,350</b>	<b>Savings - £34,300</b> <b>Loans - £32,000</b>

The scammer then provided a link to an investment/bitcoin website – and coached Miss R to transfer the funds to it. The website showed that at one point, her ‘investment’ was worth over £201,000. The website proved to be fake.

Miss R was asked to pay 15% of her investment to release the funds (USD23,000) – which she paid. But then, another USD25,000 was requested - for the use of a ‘premium

withdrawal channel'; then another USD35,000 to get her account unfrozen. She didn't pay these latter two amounts – as she had run out of cash and realised this was a scam.

Miss R says she checked the crypto exchange website – to where the payments were sent. And this looked genuine and professional. On the call with HSBC on 3 March 2023, she said she checked the FCA's register and the crypto payments exchange firm was registered, and there were positive reviews of it online.

On the fake investment website, she said its name was similar (but not the same) as the crypto firm, and she was told it was affiliated to the crypto exchange business. The logos were the same. They had a customer service team who corresponded with her in webchat.

She said she trusted the scammer who reassured her and helped her to 'trade'. She was taken in by him. She has suffered financially – she's lost all her savings, and was now in debt, having taken out loans. She has found it difficult to trust friends anymore and finds it difficult to socialise. She is on a waiting list for counselling.

Miss R says HSBC should've done more to protect her. The only call she got was on 3 March 2023 – when several closed and basic questions were asked. The payments were out of character with how she normally used her account. She says HSBC should refund the money she lost.

*What HSBC said:*

HSBC said they wouldn't refund the money. Miss R made the payments to her own crypto account in her name – so she should contact the provider of the crypto wallet.

*Our investigation so far:*

Miss R brought her complaint to us. Our investigator didn't uphold it. He said HSBC intervened in the first payment on 3 March 2023, and Miss R answered the questions satisfactorily and was happy to go ahead.

He said HSBC should've intervened in the payments on and after 8 March 2023 (£2,500) but didn't. But – he considered that even if HSBC had done so, Miss R would've gone ahead in any case. He said the WhatsApp chats showed she was committed to the scammer and was taken in by him – so any intervention by HSBC wouldn't have made any difference.

Miss R didn't agree. She said the call on 3 March 2023 wasn't adequate and asked a few basic, closed questions. If the right conversation had taken place, she would've been alerted to the scam and not made the payments. She asked that an ombudsman look at her complaint, and so it has come to me to do that. **(continued)**

*I reached a first provisional decision which said:*

I'm sorry to hear that Miss R has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Miss R didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, 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 is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators 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 make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Miss R when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – and in this case, the payments were made by debit card.

The first consideration here is: if the payments were of a sufficient size and/or were out of character with how Miss R normally used her account – then we would expect HSBC to have intervened and spoken to her about them.

I looked at her account – and it's fair to say she used her account only for low value day to day expenditure and receipt of her salary (which was about £1,900 per month). The highest payment I could see in the previous 12 months was £500 – of which there were two (to Miss R's savings account) in February 2023. Otherwise, payments were of very low value – under £50. The average balance was approximately £1,000 credit, with some small overdrawn balances.

So – it's reasonable to say that for Miss R to make payments totalling £67,250 in the space of six weeks was very unusual. And – the payments in question were preceded by transfers of a similar amount into her account – from her savings account, and from the two loans she took out. Such large credits to the account were also rare.

And – the payments were to a new payee, and to a crypto exchange firm known to be involved with facilitating transfers for crypto currency investments.

Given all this, there was enough going on here to expect HSBC to have intervened and spoken to Miss R about what was happening. And – that's what initially happened, as HSBC held the first payment for £2,500 on 3 March 2023 and spoke to Miss R about it.

It's also fair to say that such interventions can be proportionate to the value of the payment. I listened to the call. And I detail some of it:

HSBC: what is the purpose of the payment? *Miss R: transfer for trading.*

HSBC: what research have you done? *Miss R: I have used it before.*

HSBC: has anyone asked you to mislead us? *Miss R: no.*

HSBC: How were you initially approached? *Miss R: through a friend.*

HSBC: What communications have you had with the company? *Miss R: I have the app on my phone.*

HSBC: have you checked with the FCA (register)? *Miss R: yes.*

HSBC then read out a scripted warning that such payments could be a scam, to check the beneficiary by doing research, and that HSBC won't be able to recover any funds if it turned out to be a fraudulent payment. *Miss R: I understand.*

Miss R answered the questions confidently and truthfully, and the payment was released.

She's said the questions were inadequate and the scam could've been uncovered at that stage. But here, it's reasonable for me to say that for this first payment, proportionate to the value of the payment (and given it was the first one she had made to her crypto wallet) – on balance, the call was conducted satisfactorily.

I then considered what happened after that. Miss R then made a series of five payments on 5 March 2023. But - these were for a low value and here, I considered that there's a balance to be struck: HSBC has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. So, in this case, I think HSBC acted reasonably in processing the payments on 5 March 2023.

But then, on 7 March 2023 – Miss R made another payment for £2,500. It's reasonable for me to say that by this time, HSBC should've intervened again. Up to then, Miss R had made six payments in five days totalling £6,700; five of which were on the same day; and funded by a like amount from her savings. She was attempting a seventh for another £2,500. This was out of character compared to her normal account usage.

HSBC was the expert in such matters and on the call, we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- Where are the funds going to go from your crypto wallet?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

If they had done so, HSBC would've found out that Miss R had been contacted via an online dating website; had been corresponding via a WhatsApp chat; had been coached on opening the crypto wallet and had been given the link to the (fake) investment website; and was using all her savings. These were all signs of a scam and were red flags. I'm persuaded

that it's more likely than not that Miss R would've been warned about the risks involved and wouldn't have made the payments from the 7 March 2023 payment onwards.

Unfortunately, HSBC didn't make any contact with Miss R after the call on 3 March 2023. They also told us they provided no online or text/ email warnings when the payments were made.

I'm also not persuaded that the fact the payments were going to Miss R's own account and so appeared to be going somewhere safe and within her control should have satisfied HSBC that she wasn't at risk of harm. This is because by January 2019, firms like HSBC had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer or 'investment' - to have been able to identify the risk of harm from fraud.

Our investigator considered that Miss R would've gone ahead anyway – given what he saw in the WhatsApp chats. He believed she was committed to the scammer. Of course, this is a balanced judgment call. And we can never be sure of how Miss R would've reacted to HSBC's open questions if they had been asked (as I've set out). But – the point is, we will never know because HSBC didn't call or contact Miss R – as they ought. Given the circumstances, HSBC should've been aware this was a scam, and set this out to Miss R, but didn't. So on the balance of evidence here, I consider Miss R would've been prevented from making the payments.

And so, my provisional decision is that HSBC are liable to refund the payments from 7 March 2023 onwards - £60,650.

### *Contributory Negligence*

I considered whether Miss R could've done more to protect herself and whether she should therefore reasonably share some of her losses. And on balance, I don't think she could've done any more. She researched the crypto wallet provider on the FCA website – and it was listed as registered. The investment firm had a name similar to it – and she therefore thought it was related (as she had been told by the scammer). She checked online reviews – and there was nothing warning her about the 'investment' firm. I checked that as well, and that was the case.

She didn't give the scammer control over the crypto wallet – he coached her to make the transfers to it and from there to the 'investment'. She contacted the 'investment' firm's customer service department in webchats and got responses. I accept that the promised return of 20% seemed high - but equally, bitcoin prices are volatile, and such a return was arguably possible to achieve in that market.

She was clearly under the spell of the scammer – as shown by the WhatsApp conversations. But I don't think that means she was negligent here.

### *Recovery*

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I couldn't see that they'd contacted the provider of Miss M's crypto wallet – but I'm persuaded that had they done so, no funds would've remained – as she'd moved them into the bitcoin trading platform.

My provisional decision is therefore that HSBC should refund £60,650 plus interest at 8% per annum simple.

Responses to the provisional decision:

Miss R accepted the findings, but HSBC didn't. They argued:

- Miss R had met someone online and as taken in by him. She was under his spell and would've gone ahead, despite any warnings from HSBC.
- When HSBC spoke to Miss R (3 March 2023), she wasn't open in her responses. She said she had come across the opportunity through a friend – she didn't say it was through a dating website.
- She said she had researched the payee, but it appears she hadn't.
- She said she hadn't been asked by a third party to make the payment when she had been so.
- So, if HSBC had intervened again, it's more likely than not that Miss R would've given the same responses and gone ahead.
- Miss R also took two new loans – it's possible that she wasn't truthful in those loan applications, as any lender would've declined to lend money for investment purposes.
- When Miss R sought to withdraw funds from the investment, she paid a significant fee to do that – another red flag.
- The rate of return (20%) was too good to be true. This was a red flag that Miss R should've seen.
- The investment firm didn't appear on the FCA's website – another red flag that Miss R should've seen.
- If Miss R had searched for the beneficiary of her payments on the FCA website – she would've seen it wasn't regulated by the FCA. And there were several notices saying they were not authorised.
- HSBC argue that Miss R should be liable for the full amount of the payments – as she would've gone ahead anyway; or at the very least, she should contribute to her losses.**(continued)**

Second provisional decision:

*I then reconsidered this complaint in the light of HSBC's comments and issued a second provisional decision which changed my views:*

HSBC argue that Miss R would've gone ahead anyway – given her relationship with the

scammer. But I considered that very carefully in the first provisional decision and decided that wasn't necessarily the case. I revisited the case again, and my view hasn't changed.

The main point here is: we will never know how Miss R would've reacted if HSBC had intervened again after 3 March 2023 – because they didn't. So here, my decision is unchanged in that respect.

I also don't consider Miss R wasn't truthful in her responses on 3 March 2023 – the call was brief and the questions were largely closed ones. HSBC's call handler accepted Miss R's first answers each time, and didn't challenge her. If Miss R was probed more, then HSBC may have got more information and warned her. But - as I said in the provisional decision, I consider the call was proportionate to the value of the payment.

On whether Miss R was truthful in her loan applications – I make no comment, as I have no knowledge about those. And – it's not relevant to the outcome of this complaint.

Miss R did indeed have to pay a fee to try to withdraw funds. I looked at the WhatsApp chats again – and the fee was requested on 13 April 2023 – after Miss R had made all the payments, So, I set that point aside.

A return of 20% is high, but arguably, it is achievable in the bitcoin market (though volatile) – so it wasn't out of the question.

So – all of that means that in the first instance, HSBC remain liable for £60,650 – as I set out in the first provisional decision.

### *Contributory Negligence*

In my first provisional decision, I said I didn't consider Miss R could not have done more to protect herself.

But, given what HSBC said, I've reconsidered this - and I think she could have done so.

Miss R says she researched the investment firm and the provider of the crypto wallet – she said that in her call with HSBC on 3 March 2023, and in her evidence to us.

I looked again at the investment company again. And – there are four such firms on the Financial Conduct Authority (FCA)'s website, all with similar names - but not exactly the one Miss R sent money to. Miss R says she thought it was near enough – but I don't think that's sufficient when such a large amount of money is being invested. So – given this, I think it's reasonable that Miss R should've been concerned, and asked more questions, or taken advice on what she was about to do.

I looked at the provider of the crypto wallet again – the beneficiary of all the payments made from Miss R's HSBC account. There are four firms, each with similar names to each other - shown on the FCA website. And none of the four were authorised at the time of Miss R's payments – they are all shown as 'not authorised' in 2021.

And the main named provider had a warning against it dated June 2021. It said the firm “...is not permitted to undertake any regulated activity in the UK”. It's reasonable to expect Miss R to have done this research (as she said she did). If she had, she would've seen this and questioned the wisdom of what she was doing. Or at least, taken some independent advice from a professional or a trusted friend. But – there's no evidence she did so.



Therefore, for these reasons, I now think it's reasonable that Miss R should share 50% of her losses with HSBC – so HSBC should pay £30,325, plus interest at 8% per annum simple.

*Responses to the second provisional decision:*

Both Miss R and HSBC agreed.

**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.

As both Miss R and HSBC agreed, my final decision is the same as the second provisional decision.

**My final decision**

I uphold this complaint. HSBC UK Bank Plc must:

- Refund £30,325, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 March 2024.

Martin Lord  
**Ombudsman**