

The complaint

Mr M and Ms M complain that HSBC has not refunded money Ms M lost when she fell victim to an investment scam. They are represented in bringing this complaint by a family member who also lost money to the scam.

What happened

Mr M and Ms M hold a joint current account with HSBC. Ms M holds an account with another financial institution W. This decision solely concerns Mr M and Ms M's complaint about HSBC.

At the start of January 2022, Ms M received an unprompted social media message from someone I'll refer to as S. The message asked her if she was a Ms X. Ms M replied that she wasn't. S apologised for it being a wrong number. However, S then said they were an old school friend of Ms M. They began to converse, and over the following few weeks, S explained he was a financial trader. He said he could make guaranteed returns for Ms M.

Prompted by S, Ms M signed up with an online broker (which I'll refer to as E).

Ms M then began to make payments to fund her trading account with E. To do this she moved money from her joint account with HSBC to her account with W. She then moved the money from W to various accounts that E instructed her to pay. Ms M's son also transferred money directly from his own bank account. A significant portion of the money Ms M transferred came from a family friend who also wanted to invest.

S prompted Ms M to make several trades, following his directions. Ms M was advised by S that she shouldn't disclose what was happening because he said the trading relied on secret pricing information, and he had obtained this from a relative who was part of a larger consortium. In particular, when she made transfers to the accounts designated by E, Ms M was told in chat messages not to indicate anywhere that the payment was for investment, or that it was connected to the trading platform.

Ms M saw huge profits from the trades she was being prompted to make by S. After four trades, her apparent profits stood at a figure in excess of \$100,000. S then asked Ms M for more money to carry out one last large trade. He said Ms M would need to increase her trading balance to \$600,000. Ms M approached friends and family to assist her in reaching this figure. But when she spoke to her sister and discussed why she needed to borrow the funds, her sister realised this was a scam and immediately told Ms M not to send any more money.

Shortly afterwards, on 21 February, Ms M and her son reported what had happened to their various banks on 21 February 2022, and to the Police on 22 February.

HSBC said it would notify the beneficiary banks. It could not recover the funds Ms M had sent from the HSBC account because the destination account was held in her own name. It directed her to report the matter to W because the payments made from Ms M's account with W were the actual source of the loss.

Mr M and Ms M didn't accept this outcome. They referred their complaint to this service for an impartial review.

Our Investigator looked into everything that had happened. But ultimately, she didn't think HSBC could have prevented what had happened. The Investigator noted that Ms M had previously made at least one legitimate transfer to her account with W. That had been in excess of £1,000 and had been around six months prior to the start of the scam. She thought HSBC wouldn't have readily identified that Ms M's subsequent transfers to that account weren't also legitimate in nature.

Furthermore, when HSBC had spoken to Ms M on two occasions during the course of the scam, Ms M and her son hadn't been willing to reveal any details about the investment. Finally, the Investigator didn't think HSBC could have recovered any funds from Ms M's account with W, as she'd sent the funds onwards from there herself.

Mr M and Ms M didn't accept this outcome. Amongst other things, they said that the payments had been quite unlike their usual account usage, and these had been some of the first payments they'd ever sent to Ms M's account with W. Had HSBC queried further or provided more detailed scam advice, Ms M wouldn't have gone ahead. The bank hadn't done enough to protect them or to help after the scam had come to light.

In light of this disagreement, I have been asked to make a final decision on Mr M and Ms M's complaint about HSBC.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

I am extremely sorry to hear about the situation that Mr M and Ms M now find themselves in. They have sustained a significant financial loss.

Ms M believed that S was helping her to achieve excellent investment returns, but this turned out to have been entirely false. A consequence of S's deception was that Ms M inadvertently drew her friends and family in, so persuaded was she by what S said. The scam has had a terrible impact on her, her family and her friends.

Of course, the blame for what happened sits with S and the other criminals involved in deceiving Ms M. I have no power to consider the actions of those fraudsters who were ultimately responsible for what happened. The complaint I am limited to deciding is the one Ms M brings against HSBC UK (or separately about W). That means I must focus on whether I consider HSBC was at fault in any way - and if so, what difference I think that fault likely made.

The starting position in law is that Ms M is responsible for transactions she's carried out herself. Both sides accept Ms M gave the relevant payment instructions (albeit in the belief that she was making genuine investments).

HSBC's primary obligation here was to carry out Ms M's properly authorised instructions without delay. It could have been held liable had it not done so, and for example, a loss of investment opportunity had resulted from that delay.

Nevertheless, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect HSBC to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

In circumstances where such concerns arose, I'd expect the bank, as a matter of good industry practice, to have intervened - to a proportionate extent - prior to processing the payment instruction, to reassure itself the payment wasn't likely part of a scam or fraud.

Here, it appears that HSBC presented Ms M with written warning messages relating to investment scams when she was making at least some of the payments. However, Ms M's son has explained that English is not Ms M's first language, and any such written warning would have had very little impact on her as a result. While Ms M's son is more fluent and was assisting her with some of the payments, it doesn't appear she asked him to translate these messages.

More significantly, HSBC did discuss related transactions with Ms M and her son. This happened on two different dates. On the first of those, it was determined that the payee account was Ms M's own account with W. It was also established that this was one to which she'd previously sent funds. The conversation primarily focussed on the logistics of making a larger payment, and the associated fees, and the call didn't result in a payment being made that day.

A lengthier discussion took place just over a week later. In that second call, Ms M again confirmed the destination account was one she held in her own name, and that she'd paid before. Ms M didn't give a direct answer when HSBC's agent queried what investment she was ultimately planning to make. Listening to the call recording I cannot say for certain whether Ms M didn't want to disclose that information or whether she misunderstood what was being asked.

When Ms M's son then took over the call he said: *"I don't have to disclose what we invest in"*. He was questioned further about whether Ms M knew what the investment was, because her answer had suggested she maybe didn't know. Ms M's son responded to assert that Ms M definitely *did* know what she was investing in, correcting the misunderstanding. However, Ms M's son reiterated that as far as he was concerned, they didn't need to disclose to HSBC what that investment was in. And ultimately, neither he nor Ms M would disclose that information in the call.

I must bear in mind the context here. HSBC was aware that the transfers Ms M was proposing to make were to her own account with another UK financial firm, and that she'd made at least one previous payment without issue. Whatever the investment intended, it was clearly something she had discussed with at least one trusted family member, her son. And her son was adamant that they weren't prepared to disclose any further details.

All in all, I'm not persuaded any proportionate intervention or scam warning would have resulted in the bank being able to convince either Ms M or her son to disclose the further information it sought about the investment. My impression from the call is that neither Ms M, nor her son, sound at all willing to provide anything further. That corresponds with the instructions Ms M had been given that she must keep the details of the investment secret due to the source of the information being used to place the trades. I think she had been given the impression that to reveal such information would compromise the success of the

investment or worse. In that situation it is unsurprising that HSBC was unable to uncover the true scenario. As a result, the bank was impeded from providing specific tailored scam information or guidance.

Lastly, I've considered whether HSBC took the appropriate steps when the scam ultimately came to light. It gathered the details and arranged to notify the beneficiary banks as I would have expected. However, HSBC was limited in the steps it could take. Her transfers from the HSBC account had been made to an account she held and controlled. Any funds remaining in that account would still be under her control, and reporting payments to her own account as being fraudulent could have led to W freezing her account – with significant inconvenience resulting for Ms M. In this situation HSBC did what it could. I don't find it was able to take further steps beyond referring Ms M and her son to W.

Having carefully considered everything Ms M and HSBC have submitted, I don't find HSBC could have reasonably prevented Mr M and Ms M's losses here. Neither do I find it materially at fault otherwise.

I appreciate this will not be the answer Mr M and Ms M would like me to give, and I am sorry to have to disappoint them. I recognise they have lost a significant sum to a particularly cruel investment scam. But it is simply the case that I don't consider I can fairly and reasonably hold HSBC liable for that loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms M to accept or reject my decision before 18 April 2024.

Stephen Dickie
Ombudsman