

The complaint

Mrs W is unhappy HSBC Bank UK Plc (trading as first direct) won't reimburse her for the money she lost when she fell victim to a scam.

What happened

Mrs W is represented in this complaint by a solicitor, for simplicity I will refer to Mrs W throughout this decision, even when referencing what her representatives have said on her behalf.

Mrs W has told us her grandson had been investing in cryptocurrency for some time, and often discussed his investments with her. He told her that he'd initially used a company – which I'll call L – to help him when he was new to investing, had made good profits, and then had withdrawn those profits from L so he could invest independently. Mrs W subsequently received an email which appeared to be from L, and as she had heard good things about L from her grandson, and had seen some very positive reviews about it online, she submitted her contact details to L by following a link in the email.

A few days Later Mrs W was called by someone who said he worked for L and who talked her through the services it could provide. Mrs W agreed that she wanted to start to invest, she was taken through some security checks, and was told that an adviser would be making contact with her. After speaking with this adviser Mrs W made an initial investment and saw some returns. She then made another, slightly larger investment, and again saw some returns. Mrs W was then told about a new investment scheme with L that she could get involved with, but which would need her to invest a much larger amount. Mrs W says she could then see that she had made a good profit on this investment, and decided to withdraw her funds. But, after an initial delay, she was told that she'd need to pay £5,000 to access her profits. Mrs W refused to pay this, and she says that when she was then unable to make any further contact with L she realised that she had been the victim of a scam.

Mrs W contacted HSBC to tell it what had happened. After looking into things, HSBC told Mrs W that it would be refunding half of one of the payments she made to the scam, as it didn't feel it had done enough to check with her that this payment was legitimate. But ultimately it told her it would not be able to refund the rest of the money she had lost.

Mrs W was unhappy with HSBC's response and so she referred her complaint to our service.

One of our Investigators looked into what had happened, and ultimately they felt that HSBC could have done more to intervene in the payments Mrs W was making, given how unusual they were in the context of her account. However, the Investigator also felt that, in light of what Mrs W had said about the scam, it was unlikely that any further intervention from HSBC would have stopped Mrs W from making the payments. So they did not consider that HSBC needed to refund any further money to Mrs W

Mrs W was unhappy with the Investigator's findings, she feels that HSBC could have asked some more specific questions about what was happening that would have uncovered the scam and helped to prevent her loss.

As no agreement could be reached, this case has been passed to me for a decision.

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.

Having done so I've reached the same conclusion as our Investigator, and for the same reasons.

Firstly, I note that in her conversations with HSBC, Mrs W suggested that she hadn't authorised many of the payments that are in dispute here. Our Investigator questioned Mrs W about this – as she had not raised this issue in her original submissions to us – and Mrs W stated that she had not made the last two payments to the scam. But having carefully considered the evidence provided, I'm satisfied that it's more likely than not that Mrs W did authorise all the payments to the scam.

I say this because I'm satisfied that these payments were authorised using a Digital Secure Key (DSK) via Mrs W's mobile phone – which required a passcode – and she has confirmed that her passcode would not have been written down or recorded anywhere. So, I can't see that there is any way someone other than Mrs W could have authorised those payments. I don't doubt that Mrs W is giving us her honest recollections here, but it is also clear that there were a lot of payments – both attempted and successful – and, given the huge amounts of stress that this scam will have caused to Mrs W, I can understand why she may not be able to recall exactly what happened at each stage of the scam.

So, given that I'm satisfied Mrs W did authorise the payments that are in dispute, as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mrs W is responsible for them. That remains the case even though Mrs W was the unfortunate victim of a scam.

Because of this, Mrs W is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mrs W, or whether it should have done more than it did.

Mrs W had held her HSBC account for some time, and used it regularly, so there was a significant account history against which HSBC could compare any new payments. The first payment made by Mrs W was for £5,000, but in the context of Mrs W's usual account usage, I don't think this was high enough to have triggered further questions from HSBC at that stage as Mrs W did occasionally make significant payments out of her account.

I do though think that the next payment of £9,800 should have flagged as potentially suspicious to HSBC. Given the high value of this payment, that it came so soon after another relatively high payment, and that it was to a cryptocurrency exchange, I think HSBC should

have contacted Mrs W directly to ask her some questions before allowing this payment to go through.

I can see that Mrs W did discuss this payment with HSBC, but that's because she was apparently unable to confirm via text message that it was a legitimate payment. In fact, it appears that she had this issue with many of the payments she made to the scam. She would make the payment, receive a text message asking her to reply to confirm it was legitimate, and then her reply would not be accepted so she would call HSBC to ask it to approve the payment manually. This happened repeatedly, Mrs W actually spoke with HSBC seven times about the payments she was making to the scam.

But while HSBC did ask some questions of Mrs W in these calls, I agree with our investigator that it could perhaps have gone further to probe the circumstances of Mrs W's investment activity or to warn about the hallmarks of cryptocurrency investment scams. However, I'm also satisfied that, even if it had done so, it's unlikely that the scam would have been uncovered.

I say this because there are various features of the particular scam that Mrs W fell victim to that mean it would firstly not have flagged as immediately suspicious to HSBC, and also that detailed warnings about these kind of scams likely would not have resonated with Mrs W. Specifically:

- Mrs W told HSBC that she sought out the investment herself, after seeing her grandson make decent profits and, crucially, saw that he was able to withdraw those profits from the scheme. It appears that Mrs W was not investing with the same – legitimate – company as her grandson, but she thought that she was, and I think that would have given her a great deal of confidence that she was dealing with a legitimate, trustworthy investment firm.
- Mrs W had carried out research of her own, seeing numerous positive reviews of the company she thought she was investing with, and there were no warnings about scams associated with this particular company on the FCA's website at the time.
- Mrs W had met her adviser face to face and says she had been given paperwork regarding her investment, adding another layer of apparent legitimacy to the scheme.
- Mrs W had received returns from her original payment to the scheme.
- The payments Mrs W was making were to cryptocurrency accounts in her own name and she was able to see her funds being received in those accounts.

With all of this in mind, I'm satisfied that what Mrs W thought she knew about the investment scheme at the time would have meant that any intervention from HSBC would be very unlikely to have stopped her from investing further. I note that in response to our investigator's view she set out a number of questions that she feels HSBC should have asked. But many of those questions would have been answered by the points above, and I don't think Mrs W's likely answers would have raised any further concerns with HSBC. I do note that Mrs W wasn't asked about whether she'd downloaded any remote access software – which it appears she had – but I also note that when she spoke to HSBC when reporting the scam she suggested that she had not been aware this software had been downloaded on her phone. With this in mind, and considering how convinced Mrs W appears to have been that she was dealing with a legitimate investment firm, I don't think I can fairly say that any questioning about this would have raised a red flag for her.

So, in summary, with all I've seen, I'm satisfied that at the time of the payments Mrs W was confident in her decision to invest these large sums of money. And I don't think any of what Mrs W would likely have explained at the time would have given HSBC any grounds to suspect Mrs W was at risk of financial harm. In other words, I don't think HSBC could have reasonably prevented Mrs W's loss.

I also don't think that HSBC could have done anything to recover these funds once Mrs W reported the scam. I say this because the funds were sent to other accounts in Mrs W's name, to buy cryptocurrency, so there was no route through which HSBC would be entitled to retrieve any of those funds from the recipient accounts.

I don't doubt that Mrs W has been the victim of a cruel scam here, and I know that she has lost a significant amount of money. But I've not seen anything to make me think it would be reasonable to hold HSBC liable for Mrs W's loss, or to ask it to refund any more of her loss than it has already.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 17 April 2024.

Sophie Mitchell
Ombudsman