

The complaint

Ms D complains that HSBC UK Bank Plc trading as first direct ("FD") won't reimburse money she lost to an investment scam.

What happened

On 8 March 2024 I issued my provisional decision on this complaint. I gave both parties an opportunity to provide any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

In early 2020, Ms D came across an advertisement which suggested that a public figure was promoting cryptocurrency as a way to make a significant sum of money.

Ms D left her details and was contacted by an account manager representing an investment company – "B".

Ms D initially made a £250 deposit using a plastic card issued by another financial business. She was provided with a trading platform where she could see the value of her investment and the trading activity that was supposedly taking place. The fraudsters were able to demonstrate that they could quickly increase the value of an investment and this appears to have encouraged Ms D to invest increasingly large amounts.

She spoke to a number of different 'brokers' over the 8 or so months she was in communication with the fraudsters. By late May 2020 Ms D began also making payments from a limited company account of which she is the sole director.

Ms D was persistently encouraged to increase the size of her investment in order to maximise returns or increase the level of her account in order to retain the services of her account manager. A payment on 30 July 2020 was funded by a loan of the same size from a third-party provider.

Ms D made a final payment of £30,000 in November 2020. Following this payment she was unable to contact her account manager and in late December 2020 she reported the matter to FD as a scam. Ms D also made extensive enquiries with the recipient banks – those which received her money, though those endeavours appear to have been largely fruitless.

FD decided that it would reimburse a total of £19,000 – that amount being 50% of the payments that fell under the provisions of the Lending Standard's Board Contingent Reimbursement Model Code ("CRM Code"). It said that it wasn't responsible for the other payments.

£13,000 of Ms D's money was returned by a financial business which received the payments made between 23 April 2020 and 30 April 2020 but considered the payments to be suspicious and froze the recipient account. She received credits totalling £17,442.05 from

the fraudulent investment firms and £9,074.68 as a result of successful chargebacks in relation to the debit card payments. Her outstanding loss was therefore £70,242.71.

The payments in dispute are listed below:

Payment number	Date	Amount	Type of payment
1	23 April 2020	£2,500	Faster payment
2	24 April 2020	£2,500	Faster payment
3	30 April 2020	£8,000	Faster payment
4	11 May 2020	£5,000	Card payment
5	1 June 2020	£4,074.68	Card payment
6	10 June 2020	£20,644.55	International payment
7	11 June 2020	£25,431.55	International payment
8	26 June 2020	£5,608.66	International payment
9	30 July 2020	£25,000	Faster payment
	7 September 2020	£1,000	Credit (from fraudsters)
	9 November 2020	£3,942.05	Credit (from fraudsters)
10	26 November 2020	£30,000	International Payment
	30 March 2021	£9,074.68	Refund of card payments made on 11 May 2020 and 11 June 2020
	8 April 2021	£19,000	Refund from FD
	26 July 2021	£13,000	Credit (refund of 23-30 April 2020 payments)
	18 October 2021	£12,500	Credit (recovered)
Total outstanding loss		£70,242.71	

The matter was referred to our service and one of our Investigators upheld the complaint in full. They thought that Ms D was entitled to a full refund under the provisions of the CRM Code on the basis that the scam had been sophisticated, Ms D had little experience of investing and she'd carried out some checks before investing. In addition, the Investigator thought that FD missed several opportunities to question the activity Ms D was undertaking, in particular during a call which took place on 24 April 2020. They argued that, had FD properly questioned the payments, as it ought to have done, the scam would have come to light and the loss would have been prevented.

FD didn't agree, in summary it said:

- The call on 24 April 2020 took place because Ms D was looking to recall a payment, not because there were any concerns about fraud.
- It would not have known there was any link between the payments, given the various recipients involved.
- Ms D was clearly determined to make the payments, it's unlikely that any action by FD would have prevented the scam.
- Should it be found that FD is responsible for any of the loss, Ms D should also bear some responsibility.

- *It was not sufficient for Ms D to have only carried out checks on the merchant when she first invested. Instead, she should have carried out checks on an ongoing basis – particularly when the value of the payments she made increased.*
- *Had she carried out those checks she would have seen negative reviews online from late April 2020 and an FCA warning about one of the firms involved which was published on 7 May 2020.*
- *The initial demonstration that Ms D was shown, during which an amount of £30 increased to £215 within minutes and the fact that her investment had reached half a million pounds in value by the end of November 2020 were both clearly too good to be true.*
- *A lack of negative information about the firms she was investing in shouldn't have provided reassurance to Ms D – she should have sought positive confirmation that the parties involved were genuine.*
- *Ms D's lack of experience should have made her more cautious, not less.*
- *She'd made nine payments towards the scheme before trying to withdraw any money.*

As no agreement could be reached, the matter was passed to me for a final decision.

What I've provisionally 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 am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

All of the payments up to payment 6 have been refunded or recovered, so Ms D's loss only begins from that payment. Only one other payment – payment 9 is covered by the provisions of the CRM Code. The CRM Code requires signatories like FD to refund victims of APP scams in all but a limited number of circumstances. It does not cover card payments or payments made internationally. Ms D believes that payment 9 has been refunded in full (having received half of that amount from FD and half which was recovered from the recipient).

I therefore have largely limited my considerations to what I consider FD ought fairly and reasonably to have done outside of the CRM Code. In summary, I think FD should:

- *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 firms are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice FD does.*

Taking the above into account, I think that there were several missed opportunities to identify that Ms D might have been at risk of financial harm from fraud prior to payment 6 debiting her account.

While the call about payment 2 was not due to concerns the bank had about fraud, Ms D did disclose some concerning information – that she was sending money for ‘trading’ and that she’d been asked not to use the name of the trading company in the payment reference. These were both red flags – scams involving trading accounts should have been well known to FD even in early 2020. And any suggestion that Ms D ought to conceal the identity of the payee, should have also been concerning.

Even if I were to accept that FD didn’t need to question payment 2 further (though that’s not a finding I need to make), when she instructed the bank to make a large international payment from her account (something which was uncharacteristic), I think it ought, fairly and reasonably, to have linked the call about payment 2, the payments to a dubious cryptocurrency exchange and the large international payment. I think it should have recognised that this was a concerning pattern of events and was consistent with an investment scam.

So, I think there were several reasons to be concerned when Ms D made the £20,644.55 payment on 9 June 2020. And, it appears FD did have its concerns – it flagged the payment for fraud checks. However, it did not provide any warnings in relation to that payment – it simply released it when Ms D confirmed the payment wasn’t ‘dodgy’. Of course, Ms D wouldn’t have gone ahead with the payment if she believed it was and clearly didn’t know at the time that she was falling victim to a scam. So, I don’t think it was reasonable for FD to have put much weight on this response.

Instead, it should have asked her about the payment, and referred back to the earlier conversation in which she’d mentioned trading and being asked not to disclose the payee. I also don’t think it would be unreasonable for it to mention the card payments to cryptocurrency as part of that discussion.

There’s nothing within the phone call recordings I’ve heard which suggests that Ms D would have been dishonest about what she was doing. In fact, in a call on 25 May 2020 in relation to a payment being attempted from the account of the limited company of which she is a director Ms D advised that she was using the money for ‘trading’. And had FD asked her more about the circumstances of the payment, I think they would have significant reasons to be concerned. Ms D’s circumstances matched that of a well-known scam – she’d been introduced to the scheme by an advert on social media promoted by a celebrity, she was sending money to an unregulated trading platform and her investment had sky-rocketed in value in a way that was wholly unrealistic. As FD also notes, by the time Ms D made this payment a warning had been issued by the Financial Conduct Authority about one of the firms she was investing in.

I recognise that by this point, Ms D had invested a significant sum – both using her own money and that of her business. I’m sure it would have been very painful for her to have had to accept the reality that she was being defrauded. But I’m still persuaded that she would have listened to a stark warning. Ultimately, the circumstances she was describing could not have been a legitimate investment and FD ought to have been very clear about that.

I understand there was a conversation that happened much later – in October 2020 – in relation to the accounts of the limited company of which Ms D is a director. FD argue that its advisor had significant concerns about the payments Ms D was making and likely discussed those concerns in some detail with her. It doesn’t have a copy of that call recording, however, and I’m not sure I can put much weight on its inferences. It’s very difficult to know

how that call went, other than it didn't dissuade Ms D from making a further payment. I don't know if the advisor gave the stark warning I've described and I'm also conscious that Ms D would have been even more heavily invested at that point and perhaps more reluctant to accept that she was falling victim to a scam.

Overall, I'm persuaded that had FD done what I think it fairly and reasonably should have done, Ms D's loss from the 6 June 2020 payment would have been prevented.

But, having considered this matter carefully I'm also persuaded that Ms D should bear some responsibility for what happened. In making that decision, I've taken into account what the law says about contributory negligence, as well as what is fair and reasonable in the circumstances of this complaint.

I acknowledge that there were convincing aspects of this scam – the fraudsters were clearly running a sophisticated operation – a limited company linked to B would have appeared to be a genuine company at the time and I understand that the trading platform Ms D was given access to would have seemed legitimate. The cryptocurrency exchange still seems to be operating (though whether it is entirely legitimate is not clear) and I understand that Ms D did carry out some limited checks on the fraudulent investment companies before investing (finding no concerning information).

But, while I certainly don't hold Ms D to the same standard as FD, I'm concerned by several aspects of the scam and I think Ms D should have been more alive to the risk.

As early as April 2020, the fraudster said that they could 'double the profit' with 'no risk'. Later, in May 2020, Ms D calculated that the fraudsters had, on her behalf, made over €800 a day up to that point – in total she'd apparently made more profit than the size of her investment. I think Ms D ought to have realised that kind of return, seemingly with little or no risk, was simply too good to be true. And, though I accept that Ms D might have seen these apparent gains as already achieved (and therefore possible), the fraudster did not suggest this was due to good fortune, but rather he suggested he would generate £8,000-£15,000 a day if Ms D was able to deposit more money. Again, it's not clear the basis on which Ms D believed that these returns were possible and, if they were, why the fraudster was offering this service to her, rather than simply making money themselves.

I think that prior to the first very large payment (which took place in late May 2020 from the account of the limited company of which Ms D is a director), taking into account the unrealistic returns, Ms D should have carried out some further checks on the investment. Had she done so, she would have likely found that there was an FCA warning about one of the investment firms involved and that other victims were reporting having lost money to the scam.

Overall, I think that liability from payment 6 onwards should be split between FD and Ms D. For the avoidance of doubt, this outcome would be the same regardless of whether the refund of £12,500 is allocated to the £25,000 payment made on 30 July 2020 or not. That's because I think, for essentially the same reasons I've already explained, that FD can fairly rely on one of the exceptions to reimbursement under the CRM Code – that Ms D made the payment without a reasonable basis for believing that the recipient was legitimate. But, under the CRM Code, FD also has responsibilities – the most relevant here being to provide an 'Effective Warning' where it identifies an APP scam risk in a payment journey.

FD did call Ms D about that payment but didn't provide anything that could be described as an Effective Warning under the CRM Code. It only touched lightly on the way in which Ms D had obtained the payment details. It did not attempt to establish the circumstances surrounding the payment.

That means, regardless of the way that the £12,500 credit on 18 October 2021 is allocated, Ms D's position is the same as in relation to payment 6 onwards – she should be reimbursed 50% of that loss.

Recovery of funds

In relation to recovery, I can see that FD waited around a week after the matter was reported to it before reaching out to the banks which received Ms D's money. That's a little longer than I would have expected here, but I have to take into account that it had been many months since most of the payments had taken place. FD doesn't appear to have received any response to its recall request to the bank which received payments 6-8. The bank which received payment 10 said that the 'amount was settled and can no longer be returned' and it requested a police report. The message is ambiguous as to whether any money was still in the account or whether it would be returned even with a police report.

I know there was a significant amount of correspondence between Ms D, FD and the receiving banks following these initial recall requests. It appears there has been significant confusion and disagreement between the parties about messages sent and received. But, I'm afraid, I've seen nothing within those messages that indicates there was any real intention of either recipient to return Ms D's money (whether they still had it in their possession or not). So, I can't say that any error FD made in relation to this has led to further loss. We do know that the money was never returned and, in my experience, it's very unlikely that it would be. I also can't fairly conclude that a delay of a few days over Christmas, given the delay in initially reporting the matter to FD, is likely to have had a material impact on FD's ability to recover Ms D's money.

Payments 1-3 were sent to another U.K. account and the business which received them was able to identify them as being potentially fraudulent and stop those payments. Ms D received this money back.

Payment 9 went to a different destination to payments 1-3 (despite having the same payee name). That firm also received a payment from Ms D's business account. FD says that it contacted that firm but I can't see that it received any response. I know that Ms D also had some correspondence with this firm. She links the £12,500 refund that she received in October 2021 to this payment. So, she believes she has been fully reimbursed for this payment.

Compensation

I agree with the Investigator's comments about compensation – it's clear that Ms D was caused a significant amount of unnecessary trouble and upset. FD hasn't made any submissions about the suggested £200 compensation and I agree that it is fair.

Putting things right

As set out, Ms D has received some reimbursement since the events took place. Her outstanding loss prior to the complaint being referred to us was £70,242.71. Since our Investigator's view, FD have offered to refund the remaining 50% of payments 1-3 (a total of £6,500). But, as I've set out, Ms D has actually already received a refund of those payments. In fact, she's received a full refund of those payments and an additional £6,500 (as £13,000 was recovered after Ms D received £6,500 from FD in relation to those payments).

So, I won't ask FD to pay a further £6,500 as well as 50% of the outstanding loss from payment 6 onwards. That would create an unfair outcome. Instead it should pay 50% of the

outstanding loss (which takes into account that Ms D has received an additional £6,500). As noted that figure is £70,242.71. FD Should pay 50% of that amount - £35,121.36.

I think that interest should be paid at 8% simple per year from the date of payment to the date of settlement. Although I accept that the money largely came from Ms D's savings accounts she also took out lending and I think that interest award fairly reflects the impact of being without the money for a significant period of time.

My provisional decision

I've provisionally decided that this complaint should be upheld in part and HSBC UK Bank Plc should pay Ms D:

- £35,121.36
- 8% simple interest per year on that amount from the date of each payment to the date of settlement
- £200 in compensation

Both Ms D and FD accepted my provisional 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.

As both Ms D and FD accepted my provisional decision, my final decision is the same as my provisional decision set out above.

My final decision

I uphold in part this complaint about HSBC UK Bank Plc and instruct it to pay Ms D:

- £35,121.36
- 8% simple interest per year on that amount from the date of each payment to the date of settlement
- £200 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 19 April 2024.

Rich Drury
Ombudsman