

## The complaint

Mrs W is complaining that HSBC UK Bank Plc won't refund the payments she made when she fell victim to a scam.

## What happened

The circumstances of the scam are well known to both parties, so to avoid causing Mrs W distress I won't go into great detail here.

In summary, Mrs W fell victim to a romance scam when she was contacted by a person that I'll refer to as "B" through an online dating website. B told Mrs W he was working on an oil ship abroad, but needed funds to enable him to leave with some assets he'd acquired.

Mrs W thought she was in a relationship with B and that they would marry when he was able to leave the ship. B asked Mrs W to meet with his associate to pass on large amounts of cash which his associate would then arrange to pass on to him.

Mrs W withdrew funds from her account with another business, and from HSBC. Mrs W visited a branch of HSBC to withdraw funds in cash, which she raised primarily through taking out loans and through borrowing from her family. She made the following withdrawals over the counter at the branch and via the ATM, and then passed them on to B's associate (who had arranged for his 'wife' to meet Mrs W outside the branch to accept the cash.)

<b>Date of withdrawal</b>	<b>Amount</b>
28/8/2018	£3,300
04/09/2018	£12,750
12/09/2018	£9,000
18/09/2018	£8,000
21/09/2018	£9,000
27/09/2018	£14,000
28/09/2018	£300 (ATM)
29/09/2018	£300 (ATM)
30/09/2018	£300 (ATM)
18/10/2018	£2,500
19/10/2018	£2,090
23/10/2018	£2,000
01/11/2018	£2,980

06/02/2019	£3,200
28/02/2019	£2,020
<b>Total</b>	£71,740

Around November 2018, Mrs W tried to stop communicating with B – but he did get back in touch with her in February 2019 and she sent him some more money. She reported the scam to HSBC in June 2023, on the advice of the police.

HSBC looked into things, but they didn't agree to refund the payments Mrs W had made to the scam. Mrs W referred her complaint to us.

Our investigator didn't uphold Mrs W's complaint. She said, in summary, that Mrs W had told HSBC the withdrawals were for home improvements so she hadn't been honest with them, she was also lying to her friends and family, and that she'd also said to the scammer that people were giving her grief and wanted her to make a police report – but she hadn't done so. The investigator thought this meant that HSBC wouldn't have broken the spell the scammer had over Mrs W, even if they'd asked her more questions about why she was making the withdrawals.

Mrs W didn't accept the investigator's view. She said that HSBC had asked her for the purpose of the first withdrawal but it didn't ask her about any of the other withdrawals. She said that if someone had explained and asked the right questions, the scam would have been stopped.

HSBC said:

- the branch staff did ask the purpose of the payments but due to the passage of time there's no record of this; and
- they agree with the investigator that because Mrs W wasn't honest with her friends, family or the other businesses involved it's unlikely any further questioning would have uncovered the scam. And in similar cases which we have reviewed, it has been accepted that in circumstances where a customer was continually dishonest, HSBC could not have prevented the scam.

Mrs W's complaint was passed to me for review and a decision.

I issued my provisional decision on 16 July 2024. This is what I said.

*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'm currently minded to uphold Mrs W's complaint – but I think she should share responsibility for the loss with HSBC. I'll explain why.*

*In broad terms, the starting position at law is that banks and other payment service providers are expected to process payments and withdrawals that a customer authorises them to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.*

*Mrs W authorised the withdrawals in question here – so even though she was tricked into doing so and didn't intend for her money to end up in the hands of a scammer, the starting point is that she is responsible for withdrawals she authorised.*

*But this isn't the end of the story. As a matter of good industry practice, HSBC should also have taken steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.*

*Taking into account the above, 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 their 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; and*
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.*

*Because Mrs W made the withdrawals in a branch, the Banking Protocol is also relevant here.*

*The Banking Protocol is an initiative between financial businesses and the police to identify customers, specifically in branch, who are in the process of sending funds to a scammer. It has been fully in force since March 2018 – some months before the disputed withdrawals took place.*

*In summary, financial businesses have committed to:*

- implement the Banking Protocol procedure where the customer is identified as making an unusual or out of character cash withdrawal or payment transfer;*
- discreetly questioning the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been given a cover story to tell if asked about the transaction;*
- consider the responses against what they expect as normal activity on the customer's account – and if they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details (with consideration given to whether a suspect is in the branch, nearby, or has arranged to meet the customer afterwards); and*
- if the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the police immediately who will attend the branch to speak to the customer.*

*The Banking Protocol procedures are not limited to elderly or vulnerable customers, or certain fraud types. The guidance sets out that consideration should be given to any*

customer carrying out a transaction which appears to be inconsistent with their usual banking activities.

*I do think the withdrawals Mrs W carried out here were out of character. I say this because Mrs W was using the account as a day-to-day current account, and generally made modest payments from it for her bills, mortgage and general living expenses. From the statements I've seen from around eight months before the first scam withdrawal, she hadn't previously made significant cash withdrawals from the account.*

*The first withdrawal of £3,300 was perhaps not as concerning as the subsequent withdrawals. Mrs W says B's associate told her to say the withdrawals were for home repairs or improvements – and she says she did say this at the time of the first withdrawal when HSBC asked her what it was for. Although the transaction was out of character, I wouldn't necessarily have expected the branch staff to probe further at this point. The amount Mrs W withdrew was broadly in line with what I'd expect for some relatively minor repair work and it's not so out of the ordinary for tradesmen to ask for cash payments for smaller amounts.*

*But the second withdrawal of £12,750 was more suspicious, taking into account both the relatively high value and the cash withdrawal a week beforehand. There were warning signs here that Mrs W may be at risk of financial harm. And as I've set out, in these circumstances the Banking Protocol requires the branch staff to discreetly ask questions about the purpose of the withdrawal, keeping in mind the customer may have been given a cover story to tell them.*

*So, from the second withdrawal onwards I wouldn't have expected the branch staff to have accepted whatever Mrs W said about the reason for the withdrawals on face value. The onus was on the branch staff to ask questions to reasonably satisfy themselves that their customer wasn't about to become the victim of a scam. I can see that HSBC's internal procedures also required branch staff to review the account history for a two-week period before a cash withdrawal over £1,000 to look for anything unusual such as previous large cash withdrawals, and to have a conversation with the customer to ascertain if they're under duress. For cash withdrawals over £10,000 a senior member of staff should be involved.*

*Taking all this into account I would expect HSBC to have had a reasonably detailed conversation with Mrs W when she made the second withdrawal. In response to my more recent enquiries HSBC have said that the branch staff asked questions about all the withdrawals, but there's no record of this due to the passage of time. But they've previously sent us the system notes for relevant time-period showing the withdrawals, and commented that unfortunately they didn't see any notes left by the branch against any of the withdrawal payments (which suggests to me that if records of the conversations had been made, they would still be visible on the system notes from the time.)*

*But Mrs W doesn't recall the branch staff asking her about any of the withdrawals apart from the first one. It seems clear that even if they did ask questions, they don't appear to have been in enough detail to have made much of an impression on Mrs W. If HSBC had asked questions in the detail I'd expect, I'd expect Mrs W to have remembered, and I also think it's likely the notes of the conversation would have been recorded on the system notes. So, on the balance of probabilities, I think it's unlikely the branch staff did ask Mrs W questions in the level of detail I would expect under the Banking Protocol and HSBC's own procedures.*

*It follows that I don't think HSBC did what they were required to do here. But I need to go on to consider if the appropriate intervention by HSBC would have made a difference. HSBC says that it wouldn't have made a difference, because Mrs W wouldn't have been honest about why she was making the withdrawals.*

*However, I do think the proper level of intervention by HSBC under the Banking Protocol would have made a difference here. Even if the branch staff had asked about the withdrawals and Mrs W hadn't been honest with them about the reason for the withdrawal, I don't think the cover story of home improvements would have held up to the level of enquiry required under the Banking Protocol. I've not seen anything to show Mrs W was provided with a detailed cover story such that would explain why she was withdrawing such large amounts of money in cash for home improvements. I think HSBC should have considered whether it was likely that any reputable company would ask for such large payments to be made in cash – so at the least I'd expect them to have been alert to whether Mrs W was falling victim to a rogue trader scam and to have asked some questions around this.*

*And bearing in mind that Mrs W wasn't actually having work done on her home and therefore had no evidence that she was, nor did she have a detailed cover story, I'd have expected Mrs W's withdrawal reason of home improvements to have begun to unravel – which should have led to her being referred to a senior member of staff in line with the Banking Protocol.*

*HSBC have argued that Mrs W deceived her friends, family and other businesses, and because she was continually dishonest they couldn't have prevented the scam even if they had intervened. But I don't agree with this point. Mrs W's friends, family and the other businesses didn't have the same opportunity to prevent the scam that HSBC did, whether Mrs W disclosed all the circumstances of the scam to HSBC or not. HSBC had the opportunity to prevent her making withdrawals and handing these over to the scammer if they doubted any cover story – where her family did not.*

*As I've said, I don't think Mrs W's cover story would have held up to enquiry from a senior member of staff and I think it's unlikely she would have been able to allay their suspicions on further questioning - so it's likely the withdrawal wouldn't have been allowed to proceed, even if Mrs W hadn't been truthful about what was really happening here. One of B's associates was waiting outside the branch to take the envelopes of cash directly from Mrs W. If the Banking Protocol had been invoked and the police contacted, the police may have been able to apprehend the associate – which would likely have ended the scam at that point. And even if the associate wasn't apprehended, that would still mean HSBC and the police would likely have been on notice and could have done more to protect Mrs W and break the spell of the scam.*

*I would add that Mrs W's state of mind at the time was such that I believe she probably would have explained what was really happening here if the Banking Protocol had been invoked, despite not being honest with her friends and family. The chats with B show that Mrs W was under extreme stress, was struggling to sleep and was very confused. Although B had told her not to tell anyone about his circumstances, if she had been taken aside by a senior member of staff at the time of the second withdrawal and questioned with some kindness and sympathy – with the potential of a scam in mind - I think there's a good chance the details of the scam would have come out. Especially as the circumstances quite clearly look like a scam to anyone with a wider knowledge of the common scam scenarios, which the branch staff members should have had.*

*Whilst I take HSBC's point that Mrs W's other bank did also have an opportunity to intervene, those cash withdrawals were mainly done through the ATM, and those that were done over the counter were for much lower amounts so would be subject to a lower level of enquiry. This meant they didn't have the same opportunity to uncover the scam as HSBC did.*

*And although Mrs W took out loans with other businesses which she said were for home improvements, I've not seen that these businesses had the same opportunity for a face to face conversation with Mrs W as HSBC did. It appears that Mrs W was covering up the scam*

*circumstances to her friends and family, but I couldn't expect them to be on notice of the hallmarks of a scam or to have the level of scam knowledge or expertise to unpick any broad cover story in the way an adviser or more senior staff member would in HSBC's branch.*

*Overall, I'm satisfied that HSBC should have done more here to prevent the scam, by making enquiries in line with the Banking Protocol before Mrs W made the second cash withdrawal. And if they had done so, I think the scam would have been uncovered and Mrs W wouldn't have made any further payments to B. For these reasons, I consider it fair to hold HSBC liable for the loss incurred to the scam after and including the withdrawal of £12,750 made on 4 September 2018.*

*But I've also considered whether Mrs W should share any liability for the preventable loss under the principle of contributory negligence. I do appreciate that Mrs W has told us she was vulnerable to this sort of scam due to circumstances she was experiencing in her marriage, and I'm sorry she went through such a difficult time. I've no doubt Mrs W was fully invested in the apparent relationship with B, and I can see just how effectively B manipulated her. But even so, I do think her actions fell short of the standard of care that would be expected of a reasonable person in these circumstances, for the following reasons:*

- Mrs W was giving large amounts of money to someone she'd never met in person, who had presented her with an unlikely scenario about why he needed it. The nature of B's story was in line with common scam scenarios and while I'm not saying Mrs W should have been aware of this, I do think if she'd carried out some basic research into B's story she would have found out that it was very likely to be a scam.*
- In the discussion with B before she made the second cash withdrawal Mrs W made it clear she suspected she was being scammed, and that she was intending to report it to the police. She said "it's a scam...100 percent." She went on to say she was going to show the police the messages and they would tell her. Despite her suspicions that she was being scammed, she went on to withdraw the funds and pass them to B's associate.*

*Overall, for the loss I think HSBC ought to have prevented, I think it would be fair for Mrs W to share 50% liability – and for HSBC to refund the other 50%.*

*I don't currently intend to make an award of interest here. I say this because Mrs W appears to have borrowed the vast majority of the funds she gave to B from either other businesses or from her friends and family – so I don't think they were funds that would ordinarily have been available for her to use elsewhere. And it looks like the debts she incurred from borrowing from other businesses to fund the scam, which would ordinarily incur interest she would need to repay, are now part of the IVA Mrs W is currently subject to. So, it's unlikely Mrs W will be required to repay the interest on those debts.*

*Mrs W's insolvency practitioner has told us they have an interest in any redress award. Mrs W should bear in mind her obligations to the insolvency practitioner in respect of any redress she receives. A copy of this provisional decision will be sent to her insolvency practitioner.*

*My provisional decision is that HSBC UK Bank Plc should refund 50% of Mrs W's loss to the scam, starting from the payment of £12,750 made on 4 September 2018 and including all subsequent payments made to the scam.*

*HSBC replied to my provisional decision. They said they accepted it – but they wanted to make sure that the insolvency practitioner was aware of my provisional decision and the possibility of redress being paid.*

*Mrs W replied to say it would help her if HSBC accepted more liability. She also had concerns about where the redress should be paid to. She explained that she'd like the*

redress to be paid directly to her so she could repay the money she'd borrowed from her family, which didn't form part of the IVA.

### **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'm not departing from the outcome I reached in my provisional decision.

Mrs W explained that she'd like HSBC to accept more than 50% liability. I've considered this, but I still think it's fair that liability is shared equally between HSBC and Mrs W, for the reasons I've explained in my provisional decision.

I do appreciate why Mrs W would like the payment to be made directly to her, but as far as I am aware, she is still in an IVA - and her insolvency practitioner is aware of my provisional decision and has declared an interest in the redress.

I should explain that it's not for me to decide which party is entitled to the redress here. However, as there is a dispute, I think it would be fair and reasonable for HSBC to pay this settlement to Mrs W's insolvency practitioner, to determine appropriate distribution in their role as the IVA supervisor (unless they waive their right to claim the funds.)

### **My final decision**

My final decision is that I uphold this complaint. To put things right HSBC UK Bank Plc should refund 50% of Mrs W's loss to the scam, starting from the payment of £12,750 made on 4 September 2018 and including all subsequent payments made to the scam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 October 2024.

Helen Sutcliffe  
**Ombudsman**