

The complaint

Miss S is unhappy that HSBC UK Bank Plc trading as first direct bank (“HSBC”) hasn’t refunded the money she lost when she fell victim to an investment scam.

What happened

Miss S said in September 2023 she saw an advertisement on an article she found on a social media site. It was about an investment and trading course opportunity and was endorsed by celebrities. Miss S’s representative initially told us that she was unemployed and was concerned about not being able to cope with increasing mortgage interest rates so she hoped that by investing she could help clear her mortgage and provide for her elderly parents.

Miss S explained she clicked on a link within the article which took her to a genuine looking website. Miss S paid a small fee of around \$250.00 to enrol on the course and shortly after she was introduced to someone employed by an investment company – I will refer to as X. Miss S says X looked genuine and she had access to a trading platform where she could see her investment. Miss S said she had access to two accounts on the trading platform – one was an account in her name which was never to be touched and the other was where she traded the profits from the first account.

Miss S downloaded a remote access application so her mentor from X could show her how to make trades.

Miss S was persuaded to take out loans with banks she held accounts with including HSBC and also Bank M and Bank N as well as a number of other companies. She also set up new accounts Bank C, Bank R and Bank M2. Miss S also opened a number of wallets with cryptocurrency providers.

Miss S made a number of payments from other bank accounts (some of which are the subject of separate complaints).

In October 2023, Miss S made multiple payments to her newly opened account with bank C. From there the money was initially transferred to a cryptocurrency platform and later onto another new account with an electronic money institution (bank M2). HSBC did intervene on two occasions and Miss S told it the money entering her account from loan companies was for home improvements.

Shortly after this, Miss S realised she’d been the victim of scam. X had been asking for fees to release her money and then she logged on to her accounts one day and all the money from the ‘holding’ account had been moved. She reported the matter to HSBC. HSBC declined to refund Miss S.

Our investigator did not uphold the complaint. She considered that regardless of how good HSBC’s intervention was, Miss S would still have wanted to go ahead anyway. Miss S had indicated she’d been heavily coached by the scammer who was logged on to her devices through a remote desktop application. And by the time of this payment there was a pattern of new accounts being opened every time a bank stopped her transactions. She’d not been honest about the reasons of taking out the various loans she took out (saying they were for house renovations) and when other banks intervened, she continued to mislead the banks.

I wrote to Miss S and her representatives informally explaining I was intending on reaching the same outcome as the investigator broadly for the same reasons.

Miss S provided a detailed response. She emphasised her status as a victim and the coercive nature of the scam/scammer. She said her primary bank (HSBC) should have identified the activity as unusual and it failed to protect a vulnerable consumer. She explained that the scam has caused profound financial hardship and emotional distress; exacerbated by the recent passing of her father. She is unemployed, registered disabled and has no means to repay the loans. Miss S also provided some further arguments on causation - largely concerning her relationship with the scammer rather than the bank.

Miss S also pointed out the responsibility of the banks to prevent fraud and to investigate suspicious transactions. Miss S says the bank didn't do enough. Miss S provided examples other cases decided by this service that she feels supports her arguments.

Miss S's representative didn't agree. It said HSBC did not comply with its obligations under the Customer Duty. It emphasised that Miss S was vulnerable at the time. It also said that I had relied on the proximate cause of the loss and it strongly believes HSBC's omission to meet my expectations actually caused the losses. Overall, it felt it unfair to extinguish the bank's liability in light of the accepted failure while on call with Miss S.

As the complaint couldn't be resolved informally, I am issuing my final 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where I can't know for certain what has or would have happened, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

I'm sorry to hear of all Miss S has been through. Not just in terms of this scam, but also her wider situation and the recent passing of her father. I've no doubt that she has been through a lot and no doubt the scam has impacted her further

Miss S has been the victim of this cruel scam, and I don't underestimate the impact this has had on her. I therefore want to reassure Miss S that I've carefully considered her complaint and all the points put forward. If, however, I don't mention a particular point, it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

Miss S has fallen victim to what can only be described as a cruel and callous scam. I'm sorry she has lost so much money, and I can understand why she would like to be compensated for all her losses. I accept that the scammer has been the primary cause of financial harm but there is no prospect of recovering Miss S's money from the scammer. The case I am considering is against the bank and is about whether it is fair and reasonable for the bank to refund Miss S those losses. In order to do so, I need to find that the bank did something wrong and that its actions were the cause of her loss.

I should also add that each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case.

In broad terms, the starting position at law is that banks such as HSBC are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the payment service Regulations (in this case the 2017 Regulations) and the terms and conditions of the customer's account.

But, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in October 2023 that HSBC should:

- have been monitoring accounts and any payments made or received to counter various risks, including 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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 HSBC sometimes does and did in this case);
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Miss S when she authorised the payments from her account or whether it could and should have done more before processing them.

In this case, Miss S transferred money to her own account with another bank (bank C). The money was then transferred from there to buy cryptocurrency and from there on to the scammer. These transactions (transfer to her own account) of themselves are not a scam. The scam happened after that; by Miss S buying cryptocurrency and moving that onto the scammer.

That said, HSBC ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam. So I need to consider whether it ought to have done more when Miss S tried to make the payments.

Between 4 October 2023 and 24 October 2023, Miss S credited her HSBC account multiple loans (two of which were HSBC loans) totalling £149,999. The credits were then broadly transferred to her own account with Bank C.

I accept the activity in and out was unusual and concerning. Multiple loans over separate days purportedly for home improvements was a story HSBC ought reasonably to have tested much more. And whilst HSBC did eventually intervene – it was much later in the chain of transactions than I'd expect, and I don't think the conversation in the calls went far enough.

Whilst I think HSBC could have done more – for example probed more and asked more open questions about the purported home improvements, even if it had done more than it did

here, I don't think any better intervention by HSBC would have prevented Miss S's loss. This is not a decision I've made lightly, but I'm not convinced further intervention would have made a difference to Miss S's decision-making (causation).

I've gone on to consider whether, had HSBC acted as I would've reasonably expected here, this would've prevented Miss S suffering the loss she did.

In assessing whether better intervention would have made a difference, I make my decision on the balance of probabilities – in other words what I think was more likely (than not) to have happened based on the evidence and wider circumstances.

Even if I were to conclude that HSBC could and should have done more – I can only ask HSBC to reimburse Miss S if I find that any wrongdoing on its part caused her loss. That concept is one her representative should be very familiar with. Yet it has not sought to substantiate its arguments as to why better questioning would have resulted in Miss S acting any differently given the level of coaching taking place.

Miss S acknowledged that she was fully under the scammer's spell, and she was being coached by the scammer on how to interact with the banks – providing answers that were not an accurate reflection of the position. Miss S has pointed out was likely due to the manipulation techniques employed by the scammer. This however led to Miss S demonstrating a clear willingness to mislead the banks to ensure she could invest with the scammer. And I consider the influence of the scammer over Miss S remains evident throughout.

I again appreciate that a scam victim's judgement can be impaired due to the scammer's psychological grip on them – thereby making it difficult for them to recognise or act on such warnings. But while that may be the case, even if HSBC had uncovered the home improvements cover story (as arguably it could/should have done), I think the scammer would have come up with an alternative story. And if HSBC had uncovered that Miss S was investing in cryptocurrency - even when good and directly relevant warnings on cryptocurrency scams were provided by another bank, Miss S ignored those warnings and proceeded to make the payments anyway. So, I am not persuaded that better intervention by HSBC would have made a difference to her decision making.

That said, HSBC might reasonably have been concerned enough to stop the payments altogether. But over the multiple accounts Miss S used to make scam payments - a pattern emerged, that every time one of the institutions Miss S was using stopped her transactions, a new account would be opened so that Miss S could continue making the payments. So, I think if HSBC had stopped the payments, Miss S would likely have found another way to make the payments.

So, even if HSBC had done what I think it ought to have done, those actions would not have made a difference and could not have prevented Miss S's loss.

Although I recognise Miss S was vulnerable to this scam, I can't see that she communicated this to HSBC – meaning that HSBC would not have been aware that Miss S had any vulnerabilities before it processed the payments. I also don't think it would have been apparent to HSBC that Miss S was vulnerable at the time she made these transactions.

I'm not persuaded there were any prospects of HSBC successfully recovering the funds, given the money was sent to an account in her own name.

I want to reassure Miss S that I'm not placing blame or responsibility on her for what happened – as, unfortunately, she has been the victim of a cruel scam. I have a great deal of

sympathy for Miss S and the loss she's suffered, as I appreciate it is a significant sum of money and will also impact her further.

This is not an easy decision for me to make, but it would only be fair for me to direct HSBC to refund her loss if I thought they could have prevented her loss – and I'm not persuaded that this was the case. For the above reasons, I don't think HSBC has acted unfairly by not refunding the payments.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 21 March 2025.

Kathryn Milne
Ombudsman