

## **The complaint**

Mrs D complains about the actions of HSBC UK Bank Plc when she lost money to a scam.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs D met someone online (who I'll refer to here as G) and, as a result of getting to know G, she decided to start investing in crypto after G had told her about their success in investing. Mrs D was given support by G on how to set up an account with a genuine crypto exchange and then helped forward the money to another trading platform she had been referred to by G. In July 2023 Mrs D started to make payments to a genuine crypto exchange totalling a loss of around £82,000. In order to fund the investment Mrs D took out a £25,000 loan with HSBC, a £20,000 loan with another financial institution and borrowed £26,975 from friends.

When trying to withdraw her money Mrs D was told by G that she had to pay a fee of \$50,000. Mrs D was then told she had to pay a further \$100,000 fee and G asked her to take out more loans to find the money. However, it was at this point that Mrs D realised she had been scammed. So, she contacted HSBC to make a claim for her money back.

HSBC considered the complaint but said in its final response that it wouldn't be offering Mrs D a refund. HSBC said it hadn't done anything wrong, because it stopped some of the payments and Mrs D confirmed she still wanted them to be sent. Unhappy with this response Mrs D brought her complaint to this service.

Our Investigator didn't think the complaint should be upheld. She said that HSBC had stopped some of the payments and provided call recordings where it provided relevant warnings, but Mrs D hadn't been truthful in her responses. Our Investigator also said that she had contacted one of Mrs D's other banks who also spoke to Mrs D at the time of the scam and similar answers were given to that bank as the ones Mrs D provided to HSBC. As a result, our Investigator didn't think HSBC should provide a refund here.

Mrs D disagreed and asked for an Ombudsman's review. In summary, she said that only a few days after she was scammed HSBC had limited crypto payments to £10,000 per month. She said HSBC was aware there was an issue with their customers losing money to crypto scams and investments and if this limit had been put in place earlier, she wouldn't have lost as much of her money. She said that HSBC failed to protect her and her money and if it had done more this scam would've been uncovered.

I was allocated the decision and was minded to uphold the complaint in part. I wrote to both parties and asked HSBC to refund the last two payments Mrs D made towards this scam with a 50% reduction for contributory negligence. I said that when Mrs D went into an HSBC branch on 28 July 2023 to make a £27,000 payment it was refused. But after considering all the evidence about what happened in the branch, I felt that the banking protocol should've been invoked and that would've more than likely stopped the scam and Mrs D's further loss.

HSBC said it was happy to make the offer I had outlined to Mrs D as a gesture of goodwill.

Mrs D didn't agree to the offer. In summary, she said that when the payment was refused in the branch, she was told by the member of staff that she could try to make the payment online. But if she hadn't been told that she wouldn't have gone on to make the last payments towards the scam. She asked why the banking protocol wasn't invoked at that point and why wasn't more done to support her.

Mrs D said she doesn't feel the Financial Ombudsman is calling HSBC to account about its failure to not invoke the banking protocol. As a result, she doesn't think it's fair to deduct 50% to the refund as I'd suggested. She added that on the fourth payment towards the scam she mentioned to the call handler she had taken a loan out to fund the crypto investment, but nothing was said to her during the call. Mrs D said that if HSBC had said she something, then she would've listened and the scam would've been stopped. She said that too much emphasis is being placed on the phone calls she had with HSBC and that if more had been done these wouldn't have taken place.

### **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.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Firstly, Mrs D has mentioned HSBC's decision to limit crypto payments to £10,000 per month shortly after she made the payments towards this scam. I'm afraid I can't ask HSBC to make a refund based upon a change in position to its payment limits. It's not uncommon for banks to change payment limits and these decisions are very rarely retrospective which HSBC has confirmed to Mrs D previously. So, I won't be considering HSBC's choice to limit payments to crypto any further in this decision.

It is common ground that Mrs D authorised the scam payments. I accept that these were authorised payments even though Mrs D was the victim of a scam. So, although it wasn't her intention to pay money to the scammers, under the Payment Services Regulations 2017 (PSRs) and the terms of her account, Mrs D is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

HSBC's first obligation is to follow the instructions that Mrs D provides. But if those instructions are sufficiently unusual or uncharacteristic for the account, I'd expect HSBC to intervene and to ask their customer more about the intended transaction before processing it. I'd also expect HSBC to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payment. There might also be cases where it's appropriate for HSBC to refuse to follow the instruction if there are good grounds to believe it is being made as a result of a fraud or scam.

I've now had the opportunity to fully consider all of Mrs D's detailed submissions, as well as the call recordings of the conversations that took place between Mrs D, HSBC and her other

banking provider when she was trying to make payments towards the scam. Having done so, I think HSBC should've done more to stop the scam when Mrs D went into the branch on 28 July 2023. I've noted Mrs D's comments about HSBC doing more earlier in the scam – but I don't agree that HSBC treated her unreasonably by allowing the payments to be made over the phone. I'll explain why below.

HSBC stopped and spoke to Mrs D about all of the payments she made on the phone before she went into the branch to make a £27,000 payment. After listening to those calls and considering Mrs D's submissions, I'm satisfied that HSBC asked probing questions of Mrs D and provided suitable warnings to her based upon the answers it was receiving. When Mrs D was asked whether a third party had told her to make the payment, had pressured her into making the payments and told her to set up any accounts with the crypto exchange - Mrs D said no. Mrs D did mention a friend was helping her, but was very clear and adamant with HSBC (which I understand was because of the pressure G put her under) that the payments should be sent.

Mrs D says HSBC should've done more to tell her that she wasn't allowed to take out a loan to fund the crypto investment. And that if it had said this wasn't allowed and refused the payment, she would've stopped making anymore. However, I don't agree. When Mrs D was making the first few payments towards the scam one of the payments was refused and restrictions placed on her account. She had to make further calls on 22 July 2023 to get access to her account again where Mrs D was frustrated about the restrictions that were placed on her account and stopping her from making the payment. I've also considered that after her payment was refused in the branch, she continued to make payments over the phone – which I'll return to later to consider Mrs D's points about what she was told to do by the member of staff in the branch.

So, I'm satisfied that HSBC did enough to provide suitable warnings to Mrs D on the phone before she visited the branch on 28 July 2023. And I don't agree that, because of the answers she provided, HSBC could've reasonably been expected to do more here.

Ultimately, I'm satisfied that despite HSBC's warnings and questions Mrs D was under the spell of G and was going to make the payments regardless of what she was being told by HSBC on the phone.

*Should HSBC have done more to stop the scam when Mrs D visited the branch on 28 July 2023?*

Having thought carefully about what happened in the branch and the information that was available to HSBC at that time, I'm still satisfied that the banking protocol should've been used here and if it had the scam would've more than likely been uncovered.

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. 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.

It's clear from the various phone calls HSBC had with Mrs D throughout the scam that it considered the payments she was making to the crypto exchanges were out of character.

However, I've reviewed Mrs D's testimony of her visit to the branch on 28 July 2023 to make the £27,000 payment. I've also reviewed the brief note of this visit on HSBC's file. Mrs D has said that after talking with the member of staff for about 30 minutes the payment was refused. Mrs D said she feels the reason this was stopped was because the staff member wasn't reading from a script like the call handlers and was able to read her body language – which she said would've been one of nervousness.

The note on HSBC's file says Mrs D was insisting on making the payment by 4pm and that Mrs D couldn't remember the reason she put down on an application for a loan but did mention that she got the loan for crypto. However, when Mrs D was challenged on this and told a loan shouldn't be for crypto, she changed her story to say it was for a kitchen.

After considering both parties evidence about that day in the branch, I'm satisfied that HSBC should've done more here and stepped in further. The member of staff should've been able to see on Mrs D's accounts the previous transactions to crypto, the notes of previous conversations with HSBC staff about her payments and the fact her account had been recently blocked because of concerns the bank had about her being the victim of fraud. I think they also would've seen a refused payment that Mrs D attempted to make to a company that was intended as a personal payment to a friend as well. For me, these are warning signs that a customer is highly likely to be a victim of fraud on their account.

I'm sure given the phone calls Mrs D had already had with HSBC she would've tried to provide a cover story to the member of staff about the payments like she did on the day (the loan being for a kitchen) and that no one else was involved in her trading.

However, I do think the proper level of intervention by HSBC under the Banking Protocol would have likely made a difference here. Even if the branch staff had asked about the payment and Mrs D hadn't been honest about the reason for it, I don't think the cover story of the loan being for a kitchen would have held up to the level of enquiry required under the Banking Protocol according to what was happening with her payments and the previous call history on her file.

I think HSBC should have considered whether it was likely that with all the evidence it had about Mrs D's payments and the loans she had taken out to send to the crypto exchange, that she was very likely under the influence of a scammer. At the least, I'd expect them to have been alert to whether she was falling victim to an investment scam and to have asked some questions around this. At that point I think she should've been referred to a senior member of staff in line with the banking protocol due to the answers she was giving most

likely being considered inconsistent – e.g. loan for a kitchen. Instead, the payment was refused and Mrs D then went away and made two further payments towards the scam.

If Mrs D had been referred to a senior member of staff at the branch, I think they too would've had the same suspicions about Mrs D's payment reasons and account history as the teller who refused to make the payment. And, following the banking protocol, should've contacted the police. If that had been done, I'm satisfied the scam would've started to unravel once Mrs D was told by both the senior member of staff at the branch and the police that she was likely falling victim to a scam.

The banking protocol toolkit mentions that;

*"Many branch colleagues already recognise out of character transactions and ask relevant questions. Unfortunately this is not always the case and opportunities are often missed to prevent a crime. In some instances colleagues identify that the customer is making an uncharacteristic transaction and are able to convince the customer to not proceed with the transaction, preventing the fraud from occurring but this is not followed up with a report to Police. As a result victims are not provided with the necessary victim care and are often targeted again by the fraudster and continue to be defrauded. The Banking Protocol is designed to prevent this from happening."*

I think this is a good example of where an opportunity was missed to escalate this issue to a senior member of staff and the police and as a result Mrs D not receiving the necessary victim care. The payment was refused because the staff member was quite rightly suspicious of the reasons of a very large payment to a crypto exchange and that this was being funded by loans. Mrs D had also provided inconsistent messages in relation to why the loan was taken out. So, I think if she had been taken aside in branch and questioned with some kindness and sympathy – with a scam in mind – I believe there's a good chance the details of the scam would've been uncovered, and the branch members suspicions of the payment justified. I also think if the police had been called and either attended the branch or spoke to Mrs D separately, I think she would've listened to those in a position of authority about scams where people are pressured into taking out loans and moving the money to unregulated crypto exchanges by people they have only met online.

So, I'm satisfied that HSBC should refund the last two payments Mrs D made towards this scam totalling £26,975 subject to any deduction for contributory negligence.

*Did Mrs D contribute to her own losses here?*

Mrs D has argued that a 50% reduction to the final two payments she made here isn't fair because she said she was told by the staff member in branch to try and make the payments online later. And, as a result, she then attempted the payments. However, even if I accept that Mrs D was told that in the branch, I've listened to the two call recordings of the following two payments Mrs D made. And once again these follow a similar pattern to the previous calls, accept Mrs D was told by HSBC on one of the calls that its advice was to not make the payment but again Mrs D was insistent that she wanted them to be sent.

I do understand that Mrs D was under a lot of pressure from G and that she also wanted to retrieve her money after taking out two loans. But I must also consider whether she should've continued to request these payments be made; given that she received a clear warning from HSBC that it didn't think the payment should go ahead after the payment had been refused in branch. I've also considered all the other warnings that Mrs D was provided with over the course of the scam from HSBC and her other bank account provider. As a result, I'm still satisfied that HSBC and Mrs D sharing liability for the last two payments is the fairest way to settle this complaint.

I want to make clear I've considered the other points Mrs D has made such as why the banking protocol wasn't invoked by HSBC. However, understanding the reasons why this action wasn't taken by HSBC doesn't change my opinion on the outcome because I'm already satisfied that HSBC should've done more. And the reason why HSBC didn't take that action doesn't change my decision that both HSBC and Mrs D should share liability for the final two payments here.

I note Mrs D believes the Financial Ombudsman isn't holding HSBC to account for what did and didn't happen in the branch on 28 July, but it's not my role punish a firm, only to provide a decision on whether HSBC should've done more in this instance (which I'm satisfied it should) and then ask HSBC to pay a fair amount of redress in line with our process (which again is what I've done here).

### *Recovery*

Here Mrs D made faster payments to accounts in her own name at genuine crypto exchanges. As Mrs D was in control of the accounts in her name and has provided evidence of the money being moved to another platform at the request of G, there wouldn't have been any money to recover from her own accounts.

### **Putting things right**

HSBC should refund the final two payments Mrs D made towards this scam (£26,975) minus 50% - totalling £13,487.50.

Mrs D has said that she borrowed the last two payments she made towards this scam from friends. To date she has paid back £4,850. So, I believe it would be fair to only add 8% simple interest to £4,850 from 29 July 2023 to the date of settlement as her friends aren't charging her interest on the amount she borrowed.

### **My final decision**

My final decision is that I uphold the complaint in part. HSBC UK Bank Plc should do the following;

- Refund £13,487.50
- Add 8% simple interest to £4,850 from 29 July 2023 to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 2 January 2025.

Mark Dobson  
**Ombudsman**