

The complaint

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

Ms K is being represented by a claims management company but for ease I'll only refer to Ms K.

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.

In July 2023 Ms K was made aware of an investment opportunity by her friend who had invested with a merchant I'll refer here to as 'E'. E contacted Ms K and promised to make her a lot of money. Ms K was told she needed to open an account with a genuine crypto exchange and then download a genuine trading app. Ms K was also asked to download screensharing software so that E could help her set up the accounts and tell her how to move her money to them. Ms K then decided to make a total of around £29,100 in payments to E via the crypto exchange and the trading app from July 2023 to November 2023.

Ms K took out a £5,000 loan with another bank to partly fund the scam. But when she was asked to take out a further £10,000 loan she refused and lost contact with E. She then did some research into E and realised that she had been scammed. She called HSBC in January 2024 to raise a scam claim. But HSBC said it hadn't done anything wrong so it wouldn't be providing a refund. Ms K remained unhappy so she brought her complaint to this service.

Our investigator didn't think the complaint should be upheld. He said that Ms K was under the influence of the scammer and was told to tell the bank there were no third parties involved in her investment. When HSBC stopped a payment on 19 October 2023 and asked to speak with Ms K she wasn't truthful with all her answers. He felt HSBC asked reasonable questions but due to Ms K's answers he didn't think HSBC should've been expected to have done more here. So, although he felt HSBC could've intervened earlier in the payments towards the scam, he didn't think it would've made a difference.

Ms K disagreed and asked for an Ombudsman's review. She said that HSBC's intervention on 19 October 2023 didn't go far enough and that it should've been clearer in its warnings to Ms K that she was falling for a well-known type of investment scam. She added that if HSBC had done more she wouldn't have wanted to continue with the payment and the scam would've been uncovered.

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 largely the same reasons. I'm sorry to hear that Ms K has been the victim of a cruel scam. I know she

feels strongly about this complaint, and this will come as a disappointment to her, so I'll explain why.

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.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

It is common ground that Ms K authorised the scam payments of around £29,100. I accept that these were authorised payments even though Ms K 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, Ms K 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 Ms K 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.

After reviewing the previous transactions on Ms K's account and the payments she made towards this scam, I don't think any earlier intervention by HSBC would've made a difference. So, I don't think I need to make a finding on where HSBC should've reasonably stopped any earlier or later payments here. I'll explain why below.

I've listened to the calls provided by HSBC of when it spoke to Ms K on 19 October after it stopped her payment and when Ms K raised the scam claim in January 2024. Ms K was asked by HSBC on 19 October 2023 whether she had completed her own research, if any third party had contacted her and whether anyone had told her to download software to her device. Ms K said no to these questions. It also warned her about scammers asking her to open accounts that she didn't control – such as the trading app she was using. Again, Ms K said no one had told her to open an account that she didn't control.

Ms K has also told this service that the scammer told her to tell HSBC that she'd done everything herself and nobody was telling her what to do. Which is what she did when speaking to HSBC. This persuades me that by the time Ms K was making the payments she was under the influence of the scammer to try and get the money sent to the crypto exchange as quickly as possible – which is why Ms K was asking HSBC whether it would stop any further payments and ask her questions again. As a result, Ms K didn't answer HSBC's questions truthfully. So, I don't think HSBC intervening on any of the other payments would've made a difference here. I'm persuaded it's most likely that Ms K would've continued to tell her bank that she had full control over her wallet and no one else was telling

her to make the payments from the crypto exchange – because in her own words *“I had to say no-one in order to transfer the money”*.

So, I don't agree with Ms K that HSBC didn't ask reasonable questions during the calls. I think HSBC asked reasonable questions here and it responded to the answers it was provided with in the circumstances. I'm satisfied Ms K's answers meant that HSBC didn't unreasonably think she wasn't being scammed.

And I don't think this is a case where I think there was anything substantive enough to mean that HSBC would have been justified in refusing Ms K's payment instruction altogether and going against her wishes.

I've considered whether HSBC acted reasonably when it was made aware of the scam. Having done so, I'm satisfied HSBC didn't treat Ms K unfairly by not attempting to retrieve her money from the crypto exchange because Ms K has confirmed this was sent on to the scammers as per their instructions.

I appreciate this will come as a disappointment to Ms K, and I'm sorry to hear that she has been the victim of a cruel scam. I've considered her past medical history, but I can't take that into consideration here as HSBC weren't aware of these issues. As a result, I'm not persuaded that HSBC can fairly or reasonably be held liable for her loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 4 December 2024.

Mark Dobson
Ombudsman