

## The complaint

Ms O complains that HSBC UK Bank Plc won't refund money she lost when she says she was a victim of a scam.

## What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Ms O says that she fell victim to an investment scam with a firm I'll refer to as 'T'. She's explained that T told her that they would teach her how to invest through online courses and webinars; and initially asked for a small amount of money to begin with. T however then continued to apply pressure on Ms O to invest greater amounts of money. At the point Ms O decided to withdraw her funds, T explained a further £500 deposit was required but upon paying this, they closed her trading account down and contact ceased.

Ms O made the following card payments to T:

Transaction Date	Amount
23 December 2020	£200
6 January 2021	£1,050
22 January 2021	£1,000
29 January 2021	£500
<b>Total</b>	<b>£2,750</b>

Ms O has explained that this scam has impacted her greatly – both financially but also her mental health. And following advice from her medical professional, she contacted HSBC in 2024 to recover her funds. HSBC explained that Ms O couldn't dispute the payments as they'd been made more than 120 days ago – and so, they couldn't help.

Unhappy with this Ms O raised a complaint to HSBC, but their position didn't change. HSBC reiterated that they only have 120 days from the date of the transactions to dispute them. And as this time had passed, they have no chargeback rights under the VISA regulations to dispute them.

Ms O referred her complaint to the Financial Ombudsman. Our Investigator didn't however think HSBC had to refund her. In short, she said:

- She couldn't conclude with certainty that Ms O had fallen victim to a scam. But putting that aside, she didn't think HSBC could've reasonably prevented Ms O's loss.

- The payments weren't covered by the Contingent Reimbursement Model (CRM) code. Nor were they unusual or suspicious enough in appearance to have warranted HSBC to have carried out additional checks before processing them.
- There weren't any warnings about T at the time, and as HSBC didn't speak with Ms O, they didn't miss an opportunity to identify the payments were being made in relation to a scam.
- The chargeback process, in respect of recovery, is relevant here as the transactions were debit card payments. It would be good practice for a bank to attempt a chargeback in situations whereby the rights exist and there is some prospect for success.
- The scheme rules include a time limit for when a chargeback can be raised – that being no later than 120 days from the date of the transaction. As Ms O raised her claim(s) outside of this time limit, this wasn't an option.

Ms O disagreed with our Investigator and asked for her complaint to be reviewed by an Ombudsman. She emphasised that she had fallen victim to a scam - as she saw all her money disappear in front of her eyes, and T shut everything down and stopped all contact with her. Ms O also thought the new Authorised Push Payment (APP) fraud reimbursement scheme that had come into force should apply in her case. And she considered HSBC should've flagged these payments as suspicious as it wasn't in line with her spending habits.

Our Investigator explained that the APP fraud reimbursement scheme only applies to payments made from 7 October 2024. And so, the disputed payments weren't covered by it.

The matter has been passed to me to decide.

### **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 don't underestimate the impact this situation has had on Ms O – as I appreciate it is a lot of money she has lost. I therefore understand why she is doing everything she can to recover it. But while I'm sympathetic to Ms O's situation, I must consider whether HSBC is responsible for the loss she has suffered. I know this won't be the outcome Ms O is hoping for, but for similar reasons as our Investigator, I don't think they are. So, I don't think HSBC has acted unfairly by not refunding the payments. I'll explain why.

I've thought about both the CRM code and the APP fraud reimbursement scheme which can offer a potential means of obtaining a refund following situations like this. Here, unfortunately, the payments aren't covered by either. This is because the APP fraud reimbursement scheme only came into effect on 7 October 2024 and it doesn't apply retrospectively. Nor does it, or the CRM code, cover debit card payments. I've therefore considered whether it would otherwise be fair and reasonable to hold HSBC responsible for Ms O's loss.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Ms O knowingly made the payments from her HSBC account – albeit under the direction and guidance of T. And so, I'm satisfied she authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of her account, HSBC are expected to process Ms O's payments, and she is

presumed liable for the loss in the first instance.

However, taking into account the 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 to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Ms O to HSBC (either individually or collectively) were unusual enough to have expected additional checks to be carried out before the payments were processed.

When considering this, I've kept in mind that banks process high volumes of transactions each day. And that there is a balance for HSBC to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate – as it wouldn't be practical for banks to carry out additional checks before processing every payment.

While I appreciate collectively this is a lot of money Ms O has lost, the payments are relatively small amounts individually – with the two highest values about £1,000. So, based on their individual value, it wouldn't have presented a high risk of financial harm to HSBC. And while Ms O typically used her account for low value day to day transactions, she did make higher payments at times – such as one for about £1,400 in November 2020, or about £650 in October 2020. Because of this, I don't think the payments disputed here would've been seen by HSBC as out of character for Ms O.

The payments were also made over a one-month period, and so not in rapid succession. Nor did they drain Ms O's account balance. Both of which can be potential indicators of fraud or a scam. And given there weren't any regulatory warnings published about T when the payments were made, HSBC wouldn't have had enough reason to suspect Ms O might be at a heightened risk of falling victim to a scam. In these circumstances, it was reasonable for HSBC to consider the transactions as legitimate payments. It follows I think it was reasonable for HSBC to process the payments upon receiving Ms O's instruction(s).

I've also considered whether, on being alerted to the scam, HSBC could reasonably have done anything to recover Ms O's losses, but I don't think they could. The only possible option for recovery would've been for HSBC to have attempted a chargeback. But under the VISA card scheme rules, there is a strict time limit of 120 calendar days for a bank to raise a chargeback against a transaction paid for by a debit card. As Ms O didn't contact HSBC until 2024, which is clearly outside of the 120-day time limit, it was out of time under the VISA scheme rules.

It follows that, while I have a great deal of sympathy for Ms O, I cannot fairly direct HSBC to refund her. For the above reasons, I think HSBC have acted fairly and so I'm not going to tell them to do anything further.

### **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 Ms O to accept or reject my decision before 8 July 2025.

Daniel O'Dell  
**Ombudsman**