

The complaint

Ms S's complaint is about HSBC UK Bank Plc's refusal to reimburse her money she says she lost due to a scam.

Ms S is represented by Refundee in this matter. However, I will try to refer to Ms S solely in this decision for ease of reading.

What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

Ms S is a customer of HSBC. In short, she says she has fallen victim to a cryptocurrency related investment scam. The payment transactions in question are:

Payment Number	Date	Merchant	Payment Method	Amount
1	16 October 2019	Kraken Payward	Transfer (from Ms S's savings)	£5,000
2	16 October 2019	Coinipop.com	Card	£7,890.90
3	23 October 2019	Kraken Payward	Transfer	£5,000
4	30 October 2019	Kraken Payward	Transfer	£5,000
5	1 November 2019	Kraken Payward	Transfer	£5,000
6	14 November 2019	Kraken Payward	Transfer	£10,000
7	27 November 2019	PSP*safecurrency	Card	£500

Ms S disputed the above with HSBC. When it refused to reimburse her, Ms S raised a complaint, which she also referred to our service.

One of our investigators considered the complaint and did not uphold it. The investigator issued two assessments, which did not uphold the complaint for different reasons. Ms S did not accept either of the investigator's findings. Therefore, this matter has been passed to me to make a decision.

What I have 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 find that the investigator at first instance was right to reach the conclusion she did in her first assessment. This is for reasons I set out in this decision.

Preliminary issues

In the investigator's first assessment dated 29 April 2024, she held, in summary, that HSBC had done enough to protect Ms S from financial harm.

In the investigator's second assessment dated 8 September 2024, she held – after receiving further information – that she was not persuaded that Ms S had fallen victim to a scam. Since this assessment, Ms S has provided further material: emails between her and the fraudsters; and screenshots of what she says shows her Kraken wallet. Having considered this material, I am satisfied, on the balance of probabilities, that Ms S fell victim to a scam.

It follows that the investigator's first assessment stands. I have informed both parties about this.

Regulatory framework

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

Should HSBC have recognised that Ms S was at risk of financial harm from fraud?

It is not in dispute that Ms S authorised the payment transactions in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory expectations and requirements which suggest firms – such as HSBC – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transactions in this matter.

Payment 1

By way of a telephone call on 16 October 2024, Ms S asked HSBC to process Payment 1. I have set out below the relevant parts of this call between Ms S and a HSBC adviser:

- *What's the payment for, what's the reason for it?*
- *I'm doing some trading.*

- *Right, how have you heard of the company?*
- *They've been doing some work for me, so I know them.*
- *Right, so when you say trading is it like stocks and shares and things?*
- *Yeah.*
- *OK, can I just ask how you found out about this company then, how have you got their details?*
- *Because they've given them to me I'm on my yeah account and they've given me their details.*
- *But how did you get in touch with the company in the first place did they contact you or did you seek them out?*
- *[sic]*
- *I'm doing some trading ... dealing with them for the last two months.*
- *Right, and how did the relationship start with them in the first place, did they call you?*
- *I contacted them.*
- *Right OK, the only reason I'm asking all of this [Ms S] is because we do unfortunately have an awful lot of customers that fall victims to these sort of scams and things, so I'm not trying to be intrusive or nosy it's entirely up to you what you do with your money but I want to make sure you are sending it to someone legitimate I don't want you to be throwing money away, so that's the reason for all the questions but if you're happy that's fine, I won't question you any further I'll just get on and make the payment.*
- *Yeah make the payment that's fine.*
- *OK, if you're happy I'm happy.*

Later in the same call:

- *Have you done the relevant checks? I know I said I would not bring this up again [Ms S] but you see a lot of things doing this job so.*
- *I know, I know its fine it's OK.*
- *It's a London based company you're sending Euros to Germany.*
- *Yeah.*
- *It's up to you.*
- *What are you telling me this isn't legitimate, do you know that?*
- *No, I don't but I know the signs so I want to make sure you are 100% confident that they're legitimate.*

- *Well, I'm not 100% confident [sic] causing me to worry now so <laughs>.*
- *If you are not sure I'm not doing it to be mean and cause you to worry I'm doing it to make sure that you don't in hindsight think I wish I had double checked that little bit more.*
- *No, its fine it's OK.*

To my mind, the HSBC adviser asked Ms S relevant questions about Payment 1 and probed her on more than one occasion about it. The adviser clearly expressed her concerns to Ms S, but ultimately, Ms S instructed HSBC to go ahead with Payment 1. Further, I have borne in mind the value of Payment 1 and the fact it was made in 2019. I acknowledge that the type of scam Ms S fell victim to was on the rise at the time. However, such scams were not as prevalent or as well-known at the time compared to a year or two later. So, HSBC's warning regarding Payment 1 was the type of warning I would have broadly expected to see given in 2019.

I need to stress the fact that HSBC had to balance its obligation to protect Ms S from financial harm, with its obligation to execute Ms S's payment instructions regarding Payment 1. I find that HSBC carefully, and correctly, balanced those conflicting obligations when dealing with Payment 1.

For the above reasons, I am persuaded that HSBC provided Ms S with a proportionate warning regarding Payment 1, and therefore was not required to do anything further. This was a warning which Ms S chose not to heed.

I have thought about whether it would have made a difference had HSBC asked Ms S for the name of the company Ms S thought she was dealing with, *BitcoinMarketCap*. Having done so, I am not persuaded it would have likely made a difference. I say this because the warnings I have seen online about *BitcoinMarketCap* were published after Ms S made her payments.

Other payments

Ms S made every payment concerned – save for Payment 7 – over the telephone. During those calls, HSBC did not provide a clear warning regarding the payments. I acknowledge that there could be an argument made to suggest that HSBC should have provided a clear warning for some of Ms S's payments other than Payment 1.

If HSBC had provided further warnings, would they have made a difference?

As I have taken the above view, I must now turn to causation. Put simply, I need to consider whether HSBC's failure to provide further warnings caused Ms S's loss. To do this, I need to reflect on whether such warnings would have likely made any difference. Having done so, I am not persuaded that they would have. I take the view that, on the balance of probabilities, Ms S would have frustrated HSBC's attempts to protect her; and Ms S would have alleviated any concerns HSBC had.

I say this because Ms S has not provided any material which would help illuminate, for example, her mind state around the time of her payments. It follows that had HSBC provided further warnings, it is difficult to speculate what would have happened. Therefore, in the absence of such material, I have considered Ms S's response to HSBC's warning regarding Payment 1. I have relied on this as an indication to how Ms S would have likely responded to further potential warnings. Having done so, I am satisfied that it is likely Ms S would have frustrated any further attempts by HSBC to protect her. I have not seen anything

to persuade me that Ms S would not have responded to further warnings in the same way she responded to HSBC's warning regarding Payment 1.

Further, each time Ms S telephoned HSBC to make a payment – especially those to Kraken – this would have alleviated any concerns HSBC may have had about Ms S falling victim to a scam.

Finally, as Ms S does not appear to have telephoned HSBC to make Payment 7 – I have considered whether this payment should have triggered HSBC's systems prompting it to intervene. Having done so, I am not persuaded it should have. I say this because, to my mind, there are no significant aggravating factors surrounding Payment 7.

Recovery of funds

Ms S made her last payment in connection with the scam on 27 November 2019. Ms S reported the scam to HSBC on 9 December 2019.

HSBC says it attempted to recover the fund transfers but did not receive a response to its request.

The likelihood that any of the money transferred would have been successfully reclaimed seems slim. I say this especially given the time that had elapsed between Ms S's last payment and when she reported the scam. In these types of scams, fraudsters tend to withdraw/transfer out their ill-gotten gains immediately to prevent recovery.

Further or alternatively, as Ms S's payments were made to purchase cryptocurrency – which would have been forwarded on in this form – there would not have been any funds to recover. So, I am satisfied that it is unlikely HSBC could have done anything to recover Ms S's funds. Turning to the card payments, the service of exchanging Ms S's funds into cryptocurrency was provided by the exchanges. Therefore, I am not satisfied that there was any reasonable prospect of success had HSBC raised a chargeback – under the relevant scheme – on behalf of Ms S.

Vulnerabilities

In the submissions from Ms S's representatives, it is stated, amongst other things:

“Our client's mother was sick at the time and they sadly passed away after. Our client was responsible for looking after their mother during their sickness time. This was also combined with our client being made redundant at the time of the scam.”

I have not seen anything to suggest HSBC knew or ought to have known about Ms S's personal issues at the time.

Compensation for distress and/or inconvenience

I have considered whether an award for distress and/or inconvenience is warranted in this matter. Having done so, I am not persuaded that it is. Any distress and/or inconvenience Ms S has suffered is a result of the fraudsters' actions – not HSBC.

Conclusion

Taking all the above points together, I do not find that HSBC has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing HSBC to do anything further.

My final decision

For the reasons set out above, 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 S to accept or reject my decision before 27 March 2025.

Tony Massiah
Ombudsman