

The complaint

Miss W complains that HSBC UK Bank Plc ('HSBC') won't refund the money she lost as the result of a scam.

What happened

In 2018, Miss W was told about an investment opportunity by a long-term friend. I'll refer to the friend as L. The investment involved Miss W buying shares in a company, who I'll refer to as P. L's husband worked for P, and L said their family had invested and seen extremely high returns, for example, an investment of £40,000 had returned £630,000. L and her husband would be making the investment on Miss W's behalf.

Miss W says she'd known L for eight years and was friends with her family, they talked daily, and their families socialised together.

Between April 2018 and May 2019, Miss W made 28 payments from her HSBC account to three different payees – all of which involved L or L's husband, or their joint account. The payments Miss W made total nearly £100,000.

In May 2019, when Miss W was due to get her first returns on her investment, L said their accounts had been frozen and provided various other excuses as to why the payment wasn't made.

But, between August 2019 and July 2020, Miss W received payments from L which totalled just over £20,000.

Miss W was persuaded to make three further payments to L. In February 2020, she transferred £1,900 and in August 2020 she made two payments which totalled £2,000.

Ultimately, Miss W became aware that L had defrauded her and never invested the funds. Miss W didn't receive any further returns or her capital back.

Miss W raised a fraud claim with HSBC, who refunded the last three payments she made under the Contingent Reimbursement Model Code (CRM Code) – totalling £3,900. But, HSBC declined to refund any of the payments made between April 2018 and May 2019, saying they aren't covered by the CRM Code and that Miss W has a civil dispute with L. HSBC tried to recover Miss W's funds but were unsuccessful.

Miss W wasn't happy with HSBC's response, so she brought a complaint to our service.

An investigator looked into her complaint and initially upheld it, recommending that HSBC refund 50% of the payments she made. The investigator felt HSBC could've uncovered the scam on the second payment Miss W made.

HSBC disagreed with the investigator's opinion, saying that it was unlikely intervention would've prevented the loss. The investigator reconsidered Miss W's complaint and issued a second view, not upholding the complaint.

The investigator still believed that HSBC should've intervened when Miss W made the second payment, however the investigator thought it was unlikely that Miss W would've given HSBC any information that would've concerned them. And, if asked for any paperwork or further detail on the investment, that Miss W would've asked L, who would've provided the information needed. So, the investigator wasn't convinced that HSBC could've prevented Miss W's loss.

Miss W was disappointed with the change in outcome and raised a number of points as to why she disagrees, including:

- Her account activity changed dramatically as a result of the payments she made under the scam. In April 2018, she set up a new payee and transferred £10,000. In August 2018, she transferred over £11,000 and in October 2018 she took a cash advance from her credit card for over £5,000. In November 2018, she used her overdraft facility for the first time and in April 2019, she transferred over £29,000. All of these points should've warranted intervention by HSBC.
- HSBC didn't query any of the payments she made, despite having a duty to conduct its business with skill, care and diligence. Miss W also referred to HSBC's duty to pay due regard to the interests of its customers and to establish and maintain effective systems to counter the risk of financial crime.
- If HSBC had asked Miss W questions, she would've answered them honestly. HSBC should've highlighted that P and L's husband weren't FCA regulated. Also, HSBC should've asked for documentation to prove the purchase of shares. If they had, she would've asked L's husband for the documents (not L), which would've uncovered the scam as L's husband wasn't aware of the scam L was running. Miss W also feels HSBC should've pointed out the risks of high return guarantees, if they had, it would've prompted her to do more checks.
- The last three payments Miss W made were after she had received substantial funds back from L, and after L manipulated her by saying she was battling terminal cancer.

Miss W pointed out that this has taken such a severe psychological toll on her that she is now on medication, had to reduce the number of hours she works and resulted in her constantly battling high levels of stress. Miss W asked for an ombudsman to review her case.

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'm really sorry that Miss W has been the victim of an exceptionally cruel scam, perpetrated by someone she trusted. I realise that Miss W has experienced a significant financial loss which has seriously impacted her. But, in reaching an answer on her complaint, I'm not deciding whether L owes her money, rather I'm deciding whether HSBC can fairly be held liable for her loss.

The last three payments that Miss W made in February 2020 and August 2020, have been fully refunded by HSBC under the CRM Code. This is what I would've recommended if I upheld Miss W's complaint in relation to these three payments, so I won't be asking HSBC to do anything more in relation to those payments.

All of the other payments, which were made prior to 28 May 2019, aren't covered by the CRM Code. The CRM Code only came into effect on 28 May 2019 and can't be applied retrospectively to earlier payments.

The payments that HSBC haven't refunded

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

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

It isn't in dispute that Miss W authorised these payments, although I appreciate that she did so not realising she was the victim of a scam. So, HSBC aren't liable for her loss in the first instance.

But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect HSBC to have 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). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Should HSBC have intervened when Miss W made her payments?

I would've expected HSBC to have intervened when Miss W made her second payment on 17 April 2018. The payment was for £6,000 and was significantly out of character and unusual compared to her previous account activity. Prior to this payment, Miss W hadn't made any transactions for higher than £1,300. So, I would've expected HSBC to have called Miss W to ask her some questions about the payment of £6,000.

I also think HSBC should've intervened when Miss W made her payment of £10,000 on 14 August 2018. This payment was significantly larger than her previous payment of £6,000 and, again, I would've expected HSBC to have called Miss W to ask her questions about the payment.

I'm not satisfied that HSBC should've intervened again on any of the subsequent payments that Miss W made. I say this as the pattern of payments on her account to L, her husband, and their joint account, set what the "normal" activity on Miss W's account looked like. There weren't any payments that were for significantly more than the £10,000 in August 2018, and Miss W never made more than £10,000 in payments even on the days when she made more than one. So, I wouldn't have expected HSBC to have been concerned with the payments that Miss W made after August 2018.

I appreciate that Miss W feels HSBC should've been concerned in April 2019, when she made payments totalling £24,000. However, she completed these transactions over the period of six days, and this payment pattern wasn't significantly out of character with the previous payments she made as part of the scam.

Would intervention have prevented Miss W's loss?

Just because I'm satisfied that HSBC should've intervened when Miss W made two payments, doesn't necessarily mean that Miss W is entitled to a refund. I have to consider, what questions I think HSBC should've asked during those interventions, and whether I'm satisfied that it's more likely than not the scam would've been uncovered, and Miss W's loss prevented as a result.

As part of the intervention, I would've expected HSBC to ask open probing questions about why Miss W was making the payments – and I think it's most likely Miss W would've told them that she was investing. I would expect HSBC to ask what sort of return she was expecting, how she found the investment, what paperwork she had about the investment, what checks she had done on the company she was investing in and what she knew about the investment.

I think it's more likely than not that Miss W would've told HSBC that she had found the investment through a family friend who she'd known for 8 years, and the investment was buying shares in a company that her friend's husband worked for. It's worth noting that the company Miss W believed she was investing in (P) is a genuine company, UK incorporated and has significant revenues. So, any research on the company would've shown what Miss W already knew and wouldn't have raised concerns.

Miss W is also likely to have told HSBC that L and her family had previously invested and had seen significant returns on their money, and Miss W may've mentioned that L's family appeared to be living a lavish lifestyle that suggested that they had come into some money. Miss W says L had shown her accounts for P, company literature and various statements in L's name and L's mother's name which showed the rise in the value of their investments with P. L was also producing a document which appeared to come from her husband, who was making the investments on their behalf, which confirmed each investment payment Miss W made.

So, I'm not satisfied that I can fairly say HSBC would've had any concerns based on the questions I think they should reasonably have asked, or based on the answers I think Miss W would more likely than not have given them. Also, I think it's more likely than not that if HSBC had asked for any other documentation or information that Miss W would've contacted L and asked for them, and that L would've "created" whatever documentation was requested – as she had done for the statements and company literature.

Miss W says she would've contacted L's husband to get the information, which would've uncovered the scam as he wasn't aware of L's actions. But, that wasn't how the relationship and the investment had worked. As I've already referenced, L was producing and providing Miss W with documents and confirmation that appeared to come from her husband. So, I'm not satisfied that I can fairly say Miss W would've contacted L's husband. Also, it wouldn't have been appropriate for HSBC to contact L's husband directly.

I'm also not persuaded that HSBC asking Miss W questions would've concerned Miss W, or resulted in her not continuing with the payments. I say this as Miss W clearly trusted L, and I don't think questions would've broken that trust or resulted in Miss W not making any further payments.

I appreciate that L has been found guilty of fraud and has been sentenced to a jail term, but based on the information I've seen, that information wasn't available at the time Miss W made her payments. L was carrying out other fraud at the same time as she was defrauding Miss W, but this didn't come to light until after Miss W had made her payments, so I can't

fairly say that Miss W doing any checks in April or August 2018, is likely to have uncovered that L was scamming her.

So, I'm not satisfied that intervention by HSBC would've uncovered the scam. On that basis, I can't fairly say HSBC could've prevented Miss W's loss and can't fairly ask them to refund her.

Recovery of funds

I'm satisfied that HSBC attempted to recover Miss W's funds in a timely manner, unfortunately by the time she reported the scam, no funds could be recovered.

I'm really sorry to disappoint Miss W, but I'm not satisfied that I can hold HSBC liable for her loss.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 15 April 2025.

Lisa Lowe
Ombudsman