

The complaint

Ms W complains that HSBC UK Bank Plc won't refund the money she lost as a result of an investment scam. Also, about their service when she raised this complaint.

What happened

The detailed background to this complaint is well known to both parties, so this is a very brief summary of what happened.

In 2020, Ms W was approached by an art investment company (Company S) and was persuaded to buy limited edition art prints that would earn significant future returns.

Ms W decided to invest £31,120 for twelve pieces of artwork over a 2-year period. She paid the following amounts from her Company J credit card provided by HSBC:

Payment No.	Date	Payment Method	Payee	Amount
1	28/10/2020	Credit Card	Company M	£2500.00
2	30/10/2020	Credit Card	Company M	£450.00
3	21/01/2021	Credit Card	Company M	£3478.00
4	10/02/2021	Credit Card	Company M	£500.00
5	29/11/2021	Credit Card	Company M	£2000.00
6	4/8/2022	Credit Card	Company M	£2652.16
Total				£11580.16

In May 2023, Ms W received an email to say that Company S were being rebranded as Company A.

In June 2023, Ms W received an email stating that Company S had ceased trading and were proposing voluntary liquidation and that the artworks of many clients had been moved to overseas storage. Ms W contacted a financial recovery company but didn't receive a response.

In August 2023, Ms W saw a newspaper article exposing Company S as fraudulent and detailing a different recovery company. Ms W contacted the police who undertook an investigation. In October 2024, they said that *'there is not, at this time, a realistic prospect of conviction for criminal offences, with respect to the requisite evidential standard of proving the guilt of the accused beyond reasonable doubt'*.

Ms W contacted Company J (as they provided the credit card) and, in March 2024, they passed on a refund request via Section 75 of the Consumer Credit Act to HSBC's escalated complaints team.

Ms W found HSBC's process difficult, and struggled with their electric form and system to be able to respond by the 1 April 2024. Ms W asked for a manual form, provided information in

writing and made HSBC aware of her distress caused by the financial loss and being targeted by recovery scammers.

On 19 April 2024, HSBC said the following:

- A. *'Our Dispute Resolution Team have been unable to assist you in making a claim - Company M – under the card scheme protection programmes'.*
- B. *'Your claim is now being reviewed under section 75 of the Consumer Credit Act 1974 (the Act), which imposes joint and several liabilities on a credit provider, where a retailer is in breach of contract or has misrepresented the contract, (providing certain criteria are met)'.*

In May 2024, Ms W was surprised and disappointed to be told that HSBC rejected her Section 75 claim as the payments she made were to Company M (who were a bill payment service company) rather than Company S.

Ms W's surprise was because *'another bank, through which I made a similar claim, has taken a different view and reimbursed me immediately with those payments made by them through company M'.*

As Ms W couldn't see that a chargeback claim had been processed (perhaps because above Point A wasn't clear to her), she requested a further response in May 2024. But she didn't receive a response and when she wrote to HSBC in September 2024, they gave her referral rights to our service. HSBC later offered her £100 compensation, which appears to be due to the lack of a substantive response to the letter she sent in May 2024.

Ms W brought her complaint to our service. Our investigator agreed that a fraud had occurred but couldn't see that the payments carried a heightened risk of financial harm to have caused HSBC to intervene. Also, he couldn't see they had made any errors in not providing a refund through a chargeback or Section 75 and he thought HSBC's £100 compensation offer was reasonable for their service error.

Ms W asked for an Ombudsman to make a final decision and, when making this request, her points included the following:

- *Company S was a 'company set up to fail in order that its directors rather than client investors might reap the benefit'.*
- *The chargeback '120 days deadline is clearly insufficient'.*
- *Her other bank 'responded immediately with a Section 75 refund'.*
- *Her 'letter of 25th May was not responded to until 9th September 2024, after I had written again and requested a letter of deadlock, apparently because it was misfiled rather than being sent to the Complaints Department'.*

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, my decision is to not uphold this complaint and I'll explain why.

I should first say that:

- Having reviewed Ms W's submissions and read articles on Company S, I think it more likely than not that when Ms W was contacted by Company S it was with the intention to defraud her. And I'm genuinely very sorry to hear of Ms W's financial loss and the distress she experienced.

- I'm satisfied the Contingent Reimbursement Model (CRM) Code, launched in 2019 to reimburse victims of Authorised Push Payment fraud, doesn't apply here as the payments were made by credit card.
- Regarding recovery through Section 75 of the Consumer Credit Act, unfortunately it doesn't apply here. As explained by our investigator, the payments first went to Firm M and then to Company S which meant the debtor-creditor-supplier chain was broken.

I can understand Ms W's confusion where another bank pays out for this reason. However, I haven't seen any information to comment on the other bank's actions and their paying out doesn't mean HSBC made an error.

- Regarding recovery through a chargeback, I can fully understand Ms W being frustrated at not being able to have a claim considered due to the 120-day timeframe. However, the chargeback rules and process timescales for a chargeback to be raised are set by the card scheme and not HSBC and they (the scheme) have to balance consumer protection with merchant operational stability. Also, I noted that, in this case, Ms W didn't directly pay Company S, so I think it unlikely that a chargeback would've been successful.
- The Payment Services Regulations 2017 (PSR) is relevant here.

PSR

Under the PSR and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment.

There's no dispute that Ms W made the payments here, so they are considered authorised. However, in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

Banks do have to strike a balance between the extent to which they intervene in payments to try and prevent fraud and/or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions.

So, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks such as anti-money laundering and preventing fraud and scams.
- Have systems in place to look for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Having considered the above PSR, I wouldn't have expected HSBC to have intervened on any of the payments. This is because:

- The payments would've been within Ms W's agreed credit limit and, although I

appreciate they would've been high payments to Ms W, none of them were for particularly high amounts for a bank that:

- Process thousands of payments each and every day.
- Have to strike a balance between the extent to which they intervene in payments to try and prevent fraud and/or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions.
- There was no scam pattern (multiple payments increasing in velocity and size) with most of the payments spread across a long period of time.
- The payments were going to a payment processor, and this wouldn't have looked unusual. Also, after the first couple of payments it was to an established payee.

Also, having looked at Companies House records together with available information on Company S fraud and noted Ms W's following comment that:

- *'This investment fraud only came to light slowly, hence the gap between my final payment and my learning of the company's "voluntary liquidation" in June 2023 and, subsequently, the true nature of the scam in August 2023, when the newspaper article appeared'.*

even if I did think HSBC should've intervened in 2021 or 2022, it is difficult to see a basis for them either refusing the payment or Ms W not going ahead with it.

Finally, I considered HSBC's service. As mentioned above, I don't think they made any errors in not providing either a chargeback or S75 refund. Regarding the time they took to make and communicate a complaint decision, although I appreciate Ms W's difficulties and frustration with their technology, I don't think this was unreasonable.

Although I recognise administrative errors can happen in any business, I do though think that the lack of response to her May and September 2024 letters caused Ms W some distress and inconvenience, especially as she thought there were outstanding matters. HSBC recognised they failed to respond and made a £100 compensation payment. Although this is very small in comparison to Ms W's financial loss, having considered the error alongside our publicly available compensation guidance, I don't think this payment was unfair or unreasonable. This is because:

- HSBC had previously given Ms W rejection answers on her chargeback and S75 claim.
- There were escalation routes available to her.
- Her main distress was caused by the cruel scammer.

So, I'm very sorry to disappoint Ms W, but having considered all the available information, I don't think it would be fair or reasonable to uphold this complaint.

My final decision

For the reasons mentioned above, my final decision is not to uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 22 May 2026.

Paul Douglas
Ombudsman