

The complaint

Miss K complains that HSBC UK Bank Plc (HSBC) won't refund money she lost in an investment scam.

What happened

What Miss K told us:

Scam one:

Miss K was seeking to find ways of generating a second income. She needed to do this as the pandemic had meant she couldn't work for a long period. She had no investment experience.

She saw an investment company on Facebook which appeared genuine. It had 2,000 followers. She contacted the company and was given an 'account manager'. She went through various 'Know Your Customer' processes. She was encouraged to invest £1,160 by sending money to her crypto wallet, and then to the investment firm. In September 2022, she wanted to withdraw funds but as told she had to pay a fee of £2,200 to do that, so she sent this also.

Miss K sent a total of £3,360 to the investment firm. Miss K's representatives told us this amount was refunded by the scammers (to another bank account in Miss K's name) and so we didn't need to consider this part of Miss K's complaint – but it is shown here for context:

Date	Beneficiary/ Method	Amount
5 May 2022	Crypto wallet/ debit card	£860
12 May 2022	Crypto wallet/ debit card	£300
19 September 2022	Crypto wallet/ debit card	£2,200
Total loss – scam one		£3,360

Scam Two:

Later in May 2022, Miss K was contacted by phone by an assumed representative of a bitcoin firm. She was told she had £6,000 sat in an account, due to be paid. Miss K thought this was to do with the first scam, and so believed the story. She was told that to get access to these funds, she needed to make three separate payments upfront. She sent £4,051 to

another crypto wallet from her HSBC account. The scammer then cut all contact with Miss K and after two months, she realised the £6,000 wasn't going to be paid and she had been scammed. The payments were:

Date	Beneficiary/ Method	Amount
17 May 2022	Crypto wallet/ faster payment	£1
18 May 2022	Crypto wallet/ faster payment	£50
19 May 2022	Crypto wallet/ faster payment	£1,000
19 May 2022	Crypto wallet/ faster payment	£3,000
Total loss – scam two		£4,051

Miss K feels ashamed and embarrassed by what happened. She couldn't eat, or speak to anyone about the scam. She has had to work lots of extra hours, including late nights and weekends to try to make up for the losses she's suffered.

What HSBC said:

Regarding scam two, HSBC said they couldn't help, as Miss K had sent the funds to an account in her own name – her crypto wallet – and had then sent the money to the fraudulent account.

Our investigation so far:

Miss K, via her representative, brought her complaint to us. Our investigator didn't uphold it. She said:

- We didn't look into scam one as Miss K's representatives told us she had refunds for that.
- The payments weren't unusual or suspicious in appearance compared to Miss K's normal account activity. She made payments of more than the scam payments during the 12 months prior to the scam. Therefore, she didn't consider HSBC should've been alert to or question the payments.
- She noted that for the first payment of £1 on 17 May 2022, HSBC's systems couldn't complete a Confirmation of Payee (COP) check. This was because the payee's bank didn't provide that facility. But Miss K confirmed she wished to go ahead in any case.
- Miss K had been the victim of a prior scam in February 2022 – HSBC had managed to get back £203 of the £210 Miss K paid. And at that time, HSBC provided Miss K with scam education information. This was prior to scam one and scam two.

Miss K didn't agree. She said the two payments of £1,000 and £3,000 on the same day totalled £4,000 – and this was unusual and suspicious. A tailored warning should've been provided, especially given how common such investment scams are. She asked that her complaint be looked at by an ombudsman, and so it has come to me to make a final decision.

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 sorry to hear that Miss K has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Miss K didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). 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 make 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Miss K's own account - her crypto wallet

I need to decide whether HSBC acted fairly and reasonably in its dealings with Miss K when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The first important matter here is whether this were payments that HSBC might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Miss K about them.

I looked at Miss K's account history with HSBC for the previous 12 months. And I don't think the payments were unusual for her. For example, there were regular faster payments each month of £1,100. And I could also see payments of £1,200 and £36,000 (June 2021); £1,337 (July 2021); £25,000 (August 2021); and £2,000 (December 2021). So, given this, I don't consider the payments in question to be particularly unusual such that HSBC might reasonably have intercepted them and contacted Miss K.

And in this connection, there's a balance to be struck: HSBC has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think HSBC acted reasonably in processing the payments.

HSBC also told us, and showed us evidence that Miss K had been the victim of a scam in February 2022 – and while HSBC managed to get some of the money back, they also provided scam warning information to her then – including investment fraud information. But,

despite this, Miss K went ahead and made further payments to what she thought was a crypto currency investment.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. And here, there's no evidence that they did so. I've therefore considered this – but as the payments were sent to Miss K's crypto wallet and then to the scam investment firm, I think there was little prospect in any case of recovering any of the money. So - I set that aspect aside.

Miss K has lost a lot of money. She's explained why the money was important to her, and the impact her losses have had. I was sorry to learn of her circumstances. She will therefore be disappointed by my decision, but I'm not going to ask HSBC to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 8 January 2024.

Martin Lord
Ombudsman