

The complaint

Mrs A complains that HSBC UK Bank Plc (HSBC) wouldn't refund money she lost in a scam.

What happened

What Mrs A says:

Mrs A has an account with HSBC. She received a WhatsApp message from a scammer, who claimed to be working for a company who could provide her with online work. She wanted to earn some extra money so entered into messaging with the scammer. Mrs A was asked to set up an account via the company's website, using a link provided by the scammer. Mrs A checked out the real company's website which seemed genuine.

Mrs A was then asked to deposit money by transferring funds from her HSBC account to her other bank account (which I will call bank A), and into a crypto investment. Mrs A was added to a WhatsApp group of other investors, so was made to feel it was a genuine opportunity. Mrs A began work, which was said to earn her commission. Mrs A was asked to transfer further sums to stop her account going into a negative balance.

Mrs A made the following payments from her HSBC account to her account with bank A:

Date	Payment	Amount
20 November 2022	Online payment to Mrs A's account at Bank A	£325
20 November 2022	Online payment to Mrs A's account at Bank A	£293
21 November 2022	Online payment to Mrs A's account at Bank A	£715
28 November 2022	Online payment to Mrs A's account at Bank A	£1516
28 November 2022	Online payment to Mrs A's account at Bank A	£103.32
30 November 2022	Online payment to Mrs A's account at Bank A	£1696
30 November 2022	Online payment to Mrs A's account at Bank A	£593
30 November 2022	Online payment to Mrs A's account at Bank A	£201.58 (refunded)
30 November 2022	Online payment to Mrs A's account at Bank A	£201.58
Total loss		£5442.90

Eventually, Mrs A realised she was the victim of a scam – as the scammer put more and

more pressure on her to make further payments. She tried to make contact with other members of the WhatsApp group but received no response.

Mrs A says she is extremely embarrassed by what happened and has suffered stress and anxiety as a result. Because she lost so much money, she is struggling to pay bills. She can't bring herself to tell anyone about the scam, other than her husband.

Mrs A says HSBC didn't protect her and should've stopped the payments. She wants the money refunded plus interest at 8% per annum, and compensation of £500.

What HSBC say:

Mrs A reported the scam to HSBC on 12 December 2022. HSBC said the scam wasn't covered by the Contingent Reimbursement Model (CRM) Code as Mrs A made the payments to an account in her own name. Mrs A then transferred the funds from Bank A to the scammer. HSBC said they must tread a fine line between detecting fraudulent activity and preventing customers accessing their money. HSBC didn't uphold Mrs A's complaint.

Our investigation so far:

Mrs A brought her complaint to us. Our investigator didn't uphold it. He said the payments weren't out of line with Mrs A's normal account activity. He could see payments of £2000 on 31 August 2022 and on 13 October 2022. Therefore, the payments wouldn't have stood out as suspicious or concerning to HSBC. She had also made other payments to her account with Bank A. The CRM Code didn't apply as the payments were to Mrs A's own account.

HSBC hadn't contacted Bank A, but had they done so, no funds would've been available – as Mrs A had by then moved the funds to the scammer's account.

Mrs A asked that an ombudsman look at her complaint, 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 Mrs A 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 Mrs A didn't intend for the money to eventually go to the scammer – via Bank A - she is presumed to be liable for the loss in the first instance.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to payments made to another UK beneficiary – and in this case, the payment was made to Mrs A's own account with Bank A. And she then made the payments from her account with Bank A to the scammer.

But notwithstanding that the CRM Code doesn't apply, I've looked at HSBC's broader responsibilities in processing the payments in question.

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.

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

I looked at how Mrs A used her HSBC account and whether the payments were unusual – as if they were, we may have expected HSBC to intervene and ask questions. But - they weren't.

I can see Mrs A made similar payments from her account, for example:

- July 2020: payments of £350; £350; £250.
- August 2022: payments of £200; £2000.
- October 2022: payment of £2000.
- November 2022: payment of £400 (prior to the scam).

I can also see that Mrs A made other payments regularly to her account with Bank A. For example, there were at least nine payments between August 2022 and October 2022 (including two for £2000 each).

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.

I listened to the calls Mrs A made to HSBC when she reported the scam – and she confirmed she made the payments to her own account with Bank A, and then moved the funds to the scammer from Bank A. So – here, Mrs A needs to contact Bank A – as it was from that account that the payments were made to the scammer.

So, overall and in the circumstances of this case, I can't reasonably hold HSBC responsible for Mrs A's losses here.

Recovery:

I looked at whether HSBC took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost funds.

HSBC said they didn't try to recover the funds from Bank A – as they had been told by Mrs A that she had transferred the money to the scammer from Bank A – so there wasn't going to be anything to recover. I've considered this argument, and I don't think it was necessary for HSBC to contact Bank A.

I'm sorry Mrs A has had to contact us in these circumstances. I accept she's been the victim of a cruel scam, but I can't reasonably hold HSBC responsible for her loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 September 2023.

Martin Lord
Ombudsman