

The complaint

Mrs R complains that HSBC UK Bank Plc (HSBC) wouldn't refund money she lost in an investment scam.

What happened

What Mrs R says:

Mrs R was sadly widowed in January 2019. Before that, she had to give up her job to look after him for several years. Most of her late husband's money from his estate went to his grown-up children (by a previous marriage). Mrs R received a small share of the sale of her late husband's house – this was received in November 2019. She was understandably feeling depressed – and trying to rebuild her life again. She was on Facebook and a pop-up announcement introduced her to the notion of bitcoin investments. She looked into it and was then approached by someone purporting to represent a bitcoin trading platform.

This person guided her how to trade and how to send money to the platform – which I will call A. She researched the FCA website about the platform A, and there weren't any warnings about it. So she went ahead and made the following payments:

Date	Payment type / Beneficiary	Amount
8 November 2019	Faster payment / Barcelona beneficiary	£4,000 (in euros)
3 December 2019	Faster payment / Dublin beneficiary	£10,000
6 December 2019	Faster payment / Dublin beneficiary	£10,000
12 December 2019	Faster payment / Dublin beneficiary	£10,000
12 December 2019	Faster payment / Dublin beneficiary	£15,000
17 December 2019	Faster payment / Dublin beneficiary	£25,000
Total Loss		£74,000

The investment turned out to be a scam. Mrs R has now relocated from the UK – as the cost of living was too high. And moved back to her original home country, where she has returned to work, but only on a small salary. She needs the inheritance from her late husband to enable her to live.

Mrs R learned of the Contingent Reimbursement Model Code (CRM Code). She thought that

meant she could get the money back - and asked about it at a branch of HSBC - but they didn't know anything about it.

What HSBC said:

HSBC said the payments were international and weren't covered by the CRM Code. They said that the branch should've arranged for the beneficiary banks to be contacted to see if any funds could be returned – even though that was unlikely to be the case. Because of that, HSBC paid compensation of £100.

Our investigation so far:

Mrs R brought her complaint to us. Our investigator didn't uphold it. He said HSBC should've intervened in the first large payment of £10,000: it was to a new international payee and was for a larger amount than Mrs R normally made. But HSBC didn't intervene. But he went on to say that had HSBC done so, he didn't think the scam would've been uncovered – because the paperwork had been received from A and it looked genuine. There weren't any warnings on the FCA website about A at the time – these were posted later, in January 2020.

Mrs R asked that an ombudsman look at her complaint, and so it has come to me to do that.

I made a provisional decision which said:

I'm sorry to hear that Mrs R 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 R 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 a UK beneficiary – and in this case, the payments were made to an overseas (non-UK) account. So – the Code cannot be used here to look to provide any refund of the money paid.

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

The first consideration here is: if the payment was of a sufficient size and was out of character with how Mrs R normally used her account – then we would expect HSBC to have intervened, held the payment and spoken to Mrs R about it.

I looked at Mrs R's account since February 2019 (when the account was changed from a joint account to an account in Mrs R's sole name). And it's fair to say that the payments were unusual compared to the way in which she used her account – which was to make day to day expenditures of low value – apart from one payment of £2,594 in October 2019.

I can see there was then a credit (from the estate distribution) of £128,701 in November 2019 – just prior to Mrs R making the payments to A.

I think HSBC didn't need to intervene in the first payment of £4,000. I say that as 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 first payment.

But after that, I think it was reasonable to expect HSBC to have intervened and asked questions of Mrs R. This should have started with the second payment on 3 December 2019 – for £10,000. This was a payment to a new, international payee and was much larger than Mrs R was used to making. If HSBC had intervened, it's reasonable to say it's likely the scam would've been uncovered and the second and subsequent payments wouldn't have been made. And in each case, I can see they were preceded by a credit to Mrs R's account of the same amount.

HSBC was the expert in such matters and if they'd intervened and contacted Mrs R we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- Where did the money come from that you're investing?
- How did you hear about the investment?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?
- How were you given the bank account details where the money was to be paid to?

If HSBC had asked these questions, I'm persuaded they would've learnt of Mrs R's circumstances:

- That she had been recently widowed.
- That this was most of her money.
- That she had no experience of investing, nor any knowledge of bitcoin trading and its risks.
- That she had been introduced to the opportunity via Facebook.
- That she didn't know the bitcoin contact.

All of these were large red flags and there was enough going on to persuade me that Mrs R would've been warned about the risks involved and wouldn't have made the payments. I don't think that the fact that Mrs R received acknowledgement of the deposits is a reason not

to uphold the complaint – it's in the nature of such scams that paperwork which looks genuine is sent to scam victims. And – these were sent after each payment was made in any case.

And so, I think it's reasonable that HSBC are liable for the five payments totalling £70,000 (but not the first payment of £4,000) – plus interest at 8% per annum simple since the date of the payments to the date of settlement.

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 funds. Mrs R went to the branch of HSBC in April 2020. Had HSBC tried to recover the funds then, I think it's very unlikely that any money would've remained – as the nature of such scams is that funds are removed within hours of them being received.

Responses to the provisional decision:

Mrs R accepted my findings. HSBC didn't respond.

I now need 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.

As Mrs R accepted the provisional decision, and HSBC didn't respond, my final decision is in line with the provisional decision.

My final decision

I uphold this complaint. HSBC UK Bank Plc must:

- Refund £70,000 plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 10 November 2023.

Martin Lord
Ombudsman