

The complaint

Mrs D and Miss D complain that HSBC UK Bank Plc have unfairly refused to refund over £60,000 they lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. In summary, Mrs D and Miss D were approached by a scam 'investment broker' after clicking on an advert. This broker, who I will call B, convinced them to purchase crypto currency on two crypto exchanges, which was then forwarded on to B. Mrs D and Miss D made the following payments.

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.

Transaction Number	Date	Merchant	Amount	Running Total
1	09/11/2021	Swissborg	£1,000	£1,000
2	10/11/2021	Swissborg	£1,000	£2,000
3	11/11/2021	Swissborg	£200	£2,200
4	11/11/2021	Swissborg	£2,000	£4,200
5	18/11/2021	Swissborg	£7,000	£11,200
6	18/11/2021	Swissborg	£3,000	£14,200
7	19/11/2021	Swissborg	£10,000	£24,200
8	22/11/2021	Swissborg	Credit of £9,990	£14,190
8	23/11/2021	Payward	£10,000	£24,190
9	02/12/2021	Payward	£10,000	£34,190
10	16/12/2021	Payward	£25,000	£59,190
11	11/01/2021	Payward	£5,000	£64,190

Mrs D and Miss D tried to withdraw the profit that they thought that they had made with B but were told they needed to provide further funds as their withdrawal could not be processed. At this point Mrs D and Miss D realised that they had been scammed and they referred this matter to HSBC. HSBC declined to refund Mrs D and Miss D the transactions in question so they referred their complaint to us.

Our investigator upheld the complaint. They thought that HSBC should have done more when transaction 5 was attempted. This is because the payment was out of character for Mrs D and Miss D's account. The investigator thought that the scam would have likely been prevented if HSBC had contacted Mrs D and Miss D at the point of transaction 5 and asked probing questions about the nature of the payment.

They did though think that there should be a deduction from any refund of 50%, because it feels that Mrs D and Miss D contributed to their own loss.

HSBC did not agree with this, so the matter has been escalated to me to determine.

Putting things right

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, I agree with the conclusions reached by the investigator. Let me explain why.

It isn't in dispute that Mrs D and Miss D authorised the disputed payments they made to the crypto-exchange platforms. It is my understanding that once they purchased crypto, the funds were subsequently transferred to B which was actually another separate crypto wallet, of which I understand the scammers had access to. And it was from that crypto wallet that the scammers extracted the money (in the form of a crypto currency) from. So the payments were requested by Mrs D and Miss D - to purchase crypto - using their legitimate security credentials provided by HSBC.

The starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed. However, I've considered whether HSBC should have done more to prevent Mrs D and Miss D from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

In relation to the first four payments, I think overall that they were not so out of character that HSBC should have intervened.

I do think however, that transaction 5 should really have prompted intervention from HSBC. I say this because it was for a larger amount to a crypto exchange that they had only recently started using and was one of a number of payments actioned within a short space of time. So there were several indications that they were being scammed, which HSBC ought reasonably to have been aware of.

Had HSBC contacted Mrs D and Miss D about this transaction to check the funds were not being transferred as part of a scam, I think it's likely that a scam warning would have stopped Mrs D and Miss D from transferring any more money to their crypto wallet.

Had HSBC contacted Mrs D and Miss D and asked them further questions and for more of the basic surrounding context, I think it's likely they would have explained what they were doing and that they were making an investment after being approached by broker, where they was being told to send money to the broker via crypto-exchange platforms. They would have likely told them that the broker was making "trades" on their behalf, which is also another hallmark of this type of investment scam and that they had granted this broker remote access to their computer. So HSBC should have recognised these circumstances of being indicative of a scam and have acted to provide Mrs D and Miss D with a warning.

Overall, I'm satisfied that a warning to Mrs D and Miss D from their trusted bank would have probably led them to discover various scam warnings online. I appreciate there were no FCA warnings about the merchant at this point, but I can see there were other websites warning people about investing with B around this time as well.

Even if Mrs D and Miss D had not worked out that the broker they were talking to was fraudulent, it is likely that a warning would have at least alerted them to the common issues arising in relation to cryptocurrency scams, which in turn would have revealed the truth behind the supposed broker's representations. This would have probably stopped Mrs D and Miss D in their tracks. So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mrs D and Miss D probably wouldn't have continued to make the payments.

HSBC have argued that it did provide warnings online when the first transactions to each of the exchanges were made. But in my view, HSBC should have gone beyond a pop-up warning especially for transaction 5. There should have been a human intervention and for the reasons set out above I think an intervention at this point would have stopped the scam from continuing.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this case, Mrs D and Miss D have not set out what research they did on B prior to investing and I would expected them to have done some research prior to investing given the amounts of money that they were prepared to send to them. The manner in which their broker interacted with them seemed unprofessional - he used emojis in his communications and was very informal. Mrs D and Miss D made a number of transactions over a short period of time without waiting to see how their "investment" performed. Also in B's e-mail footers there is a section explaining why some people say that B is a scam, I don't think a legitimate investment firm would need to put this in their e-mail footers.

As a result, I believe a deduction in compensation of 50% in recognition of their share of responsibility is warranted, which I consider to be fair and reasonable in the circumstances. I've also thought about whether HSBC could have done more to recover the funds after Mrs D and Miss D reported the fraud, as in some circumstances the money can be recovered. However, in these circumstances, I don't think there was any way for HSBC to have recovered the funds.

Putting things right

For the reasons given above, I uphold this complaint in part and direct HSBC Bank UK PLC to:

- (1) Refund Mrs D and Miss D 50% of the total transactions from (and including) payment 5. Deducting first any refunds received prior to calculating what 50% of the total is. This should total around £30,000
- (2) Pay 8% simple interest per year on these payments from the date they paid them to the date of settlement less appropriate tax.

My final decision

My final decision is I uphold this complaint in part and direct HSBC UK Bank Plc to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Miss D to accept or reject my decision before 27 October 2023.

Charlie Newton
Ombudsman