

The complaint

Miss P has complained that HSBC UK Bank Plc (HSBC) has refused to refund her money she lost as the result of a scam.

What happened

Miss P was looking to invest money and found an advertisement online for a company that I will call B. They claimed to be specialists in crypto trading and as this was of interest to Miss P, she completed a contact form. B contacted Miss P and she was convinced to transfer funds and make debit card payments into two crypto exchanges and then once there, the funds were used to buy crypto. The crypto was then transferred to B. The investments that were made appeared legitimate. Miss P was then convinced by B that investing more would maximise her potential profit.

Miss P made the following payments from her HSBC account as set out below. These funds were then sent on to B.

Transaction	Date	Payment type	Merchant	Amount
1	24/05/2022	Bill payment	Skrill Ltd	£10,000
	30/05/2022	Credit	Skrill Ltd	credit 986.63
2	02/06/2022	Bill payment	Skrill Ltd	£15,000
3	08/06/2022	Bill payment	Skrill Ltd	£15,000
4	09/06/2022	Debit card	Binance	£10,000
5	10/06/2022	Bill payment	Skrill Ltd	£15,000
6	10/06/2022	Bill payment	Skrill Ltd	£10,000
7	13/06/2022	Bill payment	Binance	£5,000
8	22/06/2022	Debit card	Skrill Ltd	£5,000
9	22/06/2022	Bill payment	Skrill Ltd	£8,000
10	23/06/2022	Bill payment	Skrill Ltd	£10,000
11	24/06/2022	Bill payment	Skrill Ltd	£5,000
12	24/06/2022	Bill payment	Skrill Ltd	£5,000
13	27/06/2022	Bill payment	Skrill Ltd	£997
14	27/06/2022	Bill payment	Skrill Ltd	£996

Miss P later attempted to withdraw her funds from B but she was told that she had to make a tax payment. She looked into this further and at this point Miss P realised that she had been scammed. Our Investigator considered Miss P's complaint and thought it should be upheld. She thought the first payment should have been significant enough to trigger HSBC's fraud prevention measures, and it should have stepped in at this stage to ask probing questions about the payments.

Our Investigator felt that, had HSBC stepped in at this time and asked relevant questions, it was likely HSBC would have been able to see the payments were most likely part of a scam and prevented any further loss. HSBC disagreed, so this complaint has been passed to me to decide.

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.

The circumstances of this complaint are not in dispute and the evidence provided by both Miss P and HSBC set out what happened. What is in dispute is whether HSBC should refund any of the money Miss P lost because of the scam.

Miss P has accepted she authorised the payments she made to B, so the starting point here is that Miss P is responsible for making the payments. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The first transaction I believe should have been considered unusual. It was a larger transaction than Miss P usually made and she had not transferred money to crypto exchanges before. I therefore think this payment should really have prompted HSBC to intervene.

At this stage, HSBC should have stepped in and asked Miss P in depth questions to find out what the payments related to. Had HSBC stepped in at this point, I think it's likely Miss P would have explained the reason she was suddenly making this payment.

I say this because when HSBC did intervene on 7 June 2022 Miss P, whilst clearly busy, did give honest answers to the questions that the member of staff provided. She said she was sending funds to crypto exchanges to then forward the money on to an investment firm. Had she been asked further more probing questions, HSBC would likely have discovered that what Miss P was doing had all the hallmarks of a typical investment scam.

HSBC has explained that Miss P was not happy with the questions being asked on 7 June 2022 and this suggests she would not have been forthcoming during an earlier call. But Miss P was at a stables and was clearly trying to deal with a horse whilst on the call. So I think Miss P's displeasure with the call was more because of the timing of the call rather than because of what was being discussed. Also, despite this, she did answer honestly the questions that she was asked.

So overall, I am satisfied that HSBC should have intervened earlier than it did. Had it done so, and asked sufficiently probing questions, I think it likely would have uncovered that Miss P was probably being scammed and it could have warned her about this.

I'm satisfied that a warning to Miss P from her trusted bank would probably have alerted her to the common issues arising in relation to cryptocurrency scams. I think this in turn, would have revealed the truth behind B's representations. In the circumstances, I'm satisfied that this would probably have stopped Miss P in her tracks. So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, I don't think it's likely that Miss P would have continued to make the additional payments.

HSBC has mentioned that Miss P selected the reason "large purchase" when making the first payment when its online system prompted her to enter a reason for the transaction. HSBC says that this shows that Miss P intended to mislead it. But I don't think that this counts as being deliberately misleading. Technically speaking Miss P was making a large purchase of a cryptocurrency. I don't believe this demonstrates that Miss P would not have been forthcoming during a call.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their actions. In this case, I do not think that Miss P was to blame for what happened and I haven't seen anything to suggest that she had foreseen the risk of this sort of harm occurring, or indeed any harm. I do not think Miss P could have foreseen the risk that the company she was dealing with were in fact scammers and the trading account she was viewing was likely to be a simulation. I also can't see there were any credible warnings in place about B at the time Miss P started making the payments. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that Miss P should share blame for what happened.

I note that HSBC has said that the loan that Miss P took out to fund transaction 9 was probably taken out with Miss P selecting an incorrect reason for taking out the loan. I have looked at the loan documentation and it does not say the purpose for the loan. I can see that the loan company in question does allow "other" as a loan purpose, so overall I don't think there is enough for me to say that Miss P misled the loan provider. So I don't think a deduction is appropriate given the overall circumstances of this complaint.

Putting things right

HSBC UK Bank Plc should do the following:

- Refund all of the transactions.
- Pay 8% simple interest per year from the date of the transactions to the date of settlement (less any tax lawfully deductible). Interest should not be added to the £15,000 she borrowed from her brother and £5,000 she borrowed from her mother.
- Miss P took a loan to fund disputed payment 9. So in addition to refunding that payment, HSBC should pay the interest accrued, at the loan rate, from the date the loan was taken to the settlement date (or date the loan was paid off).
- In addition, upon evidence from Miss P, HSBC should add 8% simple interest per annum on the repayments she has made towards the loan, as but for HSBC's error, Miss P would otherwise have had that money.

My final decision

For the reasons given above, my decision is that I uphold this complaint in part and require HSBC UK Bank Plc, trading as HSBC Bank, to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 17 January 2024.

Charlie Newton
Ombudsman