

The complaint

Miss M complains that HSBC UK Bank Plc will not refund the money she lost as a result of an authorised push payment (APP) scam.

Miss M brought her complaint to this service through a representative. For ease I will refer solely to Miss M in this decision.

What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll summarise the key points.

Miss M fell victim to an investment scam and made a number of online faster payments totalling £308,433 to an account in her name at Payward Ltd between 8 March and 5 October 2022. She received two credits back into her HSBC account on 24 May and 14 June 2022 so her total losses were £303,757.70.

Miss M believed she was sending money, via her crypto account, to a company she had found and researched online in order to invest in commodities. When Miss M tried to withdraw her funds she was told by the investment company that she needed to first send money to cover taxes. She took out two loans from HSBC to cover these costs. When the scammer then told Miss M she needed to make one further payment as it had misallocated her final tax payment, she realised she had been scammed.

She reported this to HSBC on 14 October 2022. It rejected Miss M's claim for a refund saying she had made the payments to an account in her own name.

Our investigator didn't uphold Miss M's complaint. He thought HSBC should have questioned Miss M further – but wasn't persuaded this would have prevented the scam. He also found that HSBC was not irresponsible to provide either loan to Miss M.

Miss M asked for an ombudsman to review her complaint. In summary, she said given the value of the payments HSBC should have done more. It should have enacted the banking protocol. These payments completely depreciated her balance to new low levels. Scam education ought to have been given.

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 would like to reassure the parties that although I am focusing on the key points here – as our rules allow - I have read and considered everything that's been submitted. Having done so, I am not upholding Miss M's complaint. I'll explain why.

It isn't in dispute that although Miss M was tricked, she authorised these payments. At the time she made them she believed she was transferring money to invest in gold ultimately.

And the starting position is that banks have an obligation to follow instructions given by their customers.

However, I've considered whether HSBC should have done more to prevent Miss M from falling victim to the scam, as there are some situations in which a bank should reasonably have a closer look at the circumstances surrounding certain transactions. For example, if they are particularly out of character. To note, as the payments here were to an account in Miss M's name the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

It isn't in dispute that the payments - from the first of £24,000 and then other subsequent transfers - were unusual and they were identified as such. They triggered the bank's fraud prevention system and were held until direct contact was made with Miss M for further enquiries.

This means what I need to decide is whether the bank went far enough in all the circumstances with its interventions. And if not, whether that failure contributed to the loss.

HSBC intervened when Miss M tried to make the first payment. It spoke to her and asked about the purpose of the payment; how long her Payward account had been set up; how she had received those account details and if there had been a full or partial match when she input them; whether anyone had given her a cover story or told her to mislead the bank; and if there was any crypto currency link. It explained it was seeing a lot of scams involving payments to third parties and it read a scam warning to Miss M.

I would have expected HSBC's questioning to have gone further as Miss M was reluctant to give detailed or precise responses. I think it should have asked with more rigour about the purpose of the payment as Miss M was not specific, instead saying repeatedly it was 'personal'. Similarly, she said somewhat opaquely her Payward account had been opened 'fairly recently, but long enough'.

However, what I have to consider is whether further questioning would most likely have uncovered the scam. I would expect HSBC to ask proportionate questions - but not to interrogate Miss M. Even though she was transferring funds to a crypto account in her own name, I still think that HSBC ought to have intervened further given the significant risk of fraud associated with cryptocurrency investments at the time.

However, on balance, I'm not persuaded a more effective intervention could have prevented the scam. I don't think any of the typical characteristics of investment scams at the time would have been identified. And I think Miss M would have reassured HSBC that she was not at risk of financial harm. I say this for a number of reasons, some of which are based on information Miss M provided to HSBC on later calls:

- Miss M said she had been recommended the investment by a friend she had known for 30 years – so it had not initiated through a cold call;
- Miss M had not been promised a specific rate of return that was 'too good to be true', rather she had been told it would depend on the underlying performance of the commodity;
- she confirmed she had checked the FCA registration of the investment company (the FCA later published a warning but this was not in place at the start of the scam);
- this was a cloned investment scam so good reviews of the 'real' company were available online;
- the scammer had completed full KYC (know your customer) checks before progressing adding credibility;

- there is no evidence she was pressured to ‘act now, act urgently’;
- Miss M had not been given a cover story to use if the bank intervened;
- Miss M had significant funds available to invest following an inheritance so it was wholly plausible she would be looking at different investments – indeed during the life of the scam she spoke to one of HSBC’s wealth managers and explained as this was a recent investment she did not need/want to review it yet;
- whilst the payments reduced her balance – it was previously unusually high for a current account and the pattern of payments did not rapidly drain her account; and finally
- she had documentation to support her investment and each supposed deposit into it.

The banking protocol which Miss M referred to is not relevant here as those are provisions for consumers making branch payments. That said, regardless of the payment method, similar principles apply regarding what type of questioning should be employed when a payment(s) is identified as suspicious. And I have explained above why I’m not persuaded such questioning would have uncovered the scam here. Similarly, I therefore do not think HSBC would have had reason to involve the police.

I have then considered if HSBC did what it ought to try to recover Miss M’s money once she reported the scam. Unfortunately the money had already been moved on from the receiving account by the time she contacted HSBC, so any recovery attempt would have been unsuccessful.

I have also looked at the lending decisions HSBC made during the scam when Miss M needed further funds, purportedly to pay the taxes that would release her profits. I note HSBC was not aware that this was the reason for her borrowing and that is an important consideration in my findings. HSBC completed affordability assessments and credit checks that I find were proportionate. It has shared the results of these checks and I think it made fair lending decisions based on the data it gathered.

This means I am not instructing HSBC to refund any money to Miss M. This is a difficult decision to make, I’m sorry Miss M lost a considerable amount of money which was very distressing for her. I can understand why she would like to be compensated for her losses. And I do accept Miss M has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find HSBC can fairly be held liable in the circumstances of this case.

My final decision

I am not upholding Miss M’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 9 August 2023.

Rebecca Connelley
Ombudsman