

The complaint

Mrs M complains that HSBC UK Bank Plc won't refund her the money she lost, after she fell victim to an Authorised Push Payment ("APP") scam.

Mrs M brings her complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mrs M.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

In or around April 2022, Mrs M saw an advert on a well-known online retailer and web service provider's platform regarding the opportunity to learn how to trade currency. Interested, she provided her personal details. But she subsequently received a call from fraudsters, who were posing as cryptocurrency investment brokers.

Mrs M has said the advert looked plausible and genuine. The fraudsters built rapport and had a believable corporate aura about them. She said they used technical language about trading and created a professional-looking platform for her. The scammers persuaded Mrs M to download screen-sharing software so they could assist her. She was told she could make substantial returns, with risk free guarantees.

Believing everything to be genuine, Mrs M decided to invest. She initially made a payment for £200, from a building society account that she held elsewhere. When she could see that investment doing well, she decided to invest more. The fraudsters instructed Mrs M to set up a new account with an Electronic Money Institution (EMI), as well as setting up a wallet on a cryptocurrency platform. Ultimately Mrs M sent money from the account she held with HSBC to her newly set up EMI account, then on to the fraudsters from there.

When Mrs M tried to withdraw funds, she was told that she needed to pay fees, which she initially did. But on mentioning what was happening to a family member, it became apparent to her that she'd fallen victim to a scam. Overall, between 22 April 2022 and 30 May 2022, Mrs M made seven payments from her HSBC account, totalling £74,280, which she lost to the scam.

Mrs M raised the matter with HSBC and it looked into her complaint. It issued its final response on 2 November 2022, not upholding it. In summary, it didn't consider there had been a bank error. HSBC added that relevant on-screen fraud and scam advice was provided when Mrs M made her first payment.

Unhappy with HSBC's response, Mrs M brought her complaint to this service. One of our Investigators looked into things and thought the complaint should be upheld in part. In summary, our Investigator thought HSBC missed an opportunity to ask Mrs M further questions about the payment, given she thought they were significantly out of character for her. She thought that further probing by HSBC would have exposed the scam.

But our Investigator also thought Mrs M should share some liability for her loss. In summary this was because she didn't think Mrs M had completed any due diligence before making the payments and there were various elements about the scam that should have raised red flags. Overall, our Investigator's view was that HSBC should refund Mrs M 50% of the money she lost from her HSBC account, along with interest.

Mrs M accepted our Investigator's view, but HSBC disagreed. In summary, it said Mrs M hadn't suffered a loss from her HSBC account, as the funds were moved to an account that was in her control. It added that Mrs M had been provided with a clear and relevant warning and it didn't think any further intervention from it would have prevented the scam.

As agreement couldn't be reached, the complaint has now been passed to me for 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 aware that both parties have referred to other decisions issued by our service in their submissions. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mrs M's complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position in law is that Mrs M is responsible for transactions she's carried out herself. Mrs M doesn't dispute that at the time, she intended to make the payments, albeit with the belief the payments were towards a legitimate investment. But that isn't the end of things, HSBC along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud.

Having reviewed Mrs M's HSBC account statements for the months leading up to the scam, I'm persuaded that the first payment she makes, for £5,000 on 22 April 2022, represented a departure from how the account was typically run. This payment was significantly larger than other payments she'd previously made, so I think HSBC ought to have recognised that there was a significant chance that she'd been targeted by fraudsters. Particularly so as Mrs M had selected the purpose of payment as 'investment', which she hadn't done previously and that this payment was going to a newly set up payee.

As well as this, I'm also mindful that Mrs M was in her seventies at the time of the scam and I think this is a relevant factor here. Mrs M's age profile is one that is disproportionately targeted by scammers. This has been recognised by the industry for a long time and ought to have been something HSBC was aware of.

In the circumstances, I'm not persuaded the on-screen warning HSBC provided, which Mrs M has said she can't recall seeing, went far enough. For the reasons explained above, I think there was enough going on that HSBC ought to have intervened further than it did and spoken to Mrs M before allowing the payments to be progressed.

I've found no good reason to think Mrs M would not have been honest about why she was sending this money – at that point, she still thought she was making payments towards a

genuine investment, and the scammers hadn't told her to lie if questioned. Indeed, this is supported by Mrs M selecting 'investment' as the purpose for the payment. So had HSBC stopped the £5,000 payment for further questioning or additional checks, as I think it ought to have done, I think it would have been able to identify some of the commonly occurring features of investment scams of this kind and helped Mrs M take steps to protect herself. Given the use of screen monitoring software, the unrealistic returns promised and the lack of proper paperwork or regulation, I'm satisfied it ought to have identified this was most likely a scam and warned Mrs M or stopped further payments altogether. And I've seen no reason why Mrs M would not have listened to HSBC. After all, it was the professional in these matters and Mrs M was not an experienced investor.

HSBC has argued that it shouldn't be held liable for the transfers involved because the receiving account was in Mrs M's name, so there was no loss from her HSBC account. However, I don't agree with that conclusion. Even though Mrs M was transferring funds to an account in her own name, I think HSBC would've still been on notice about crypto scams. And HSBC should still fairly and reasonably have looked out for potentially fraudulent payments, even if they were going to another account in the name of the customer. Identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So HSBC can still be held liable for a loss that resulted from its failure to intervene, which I believe to be the case here.

By 2022, the Financial Conduct Authority (FCA) and Action Fraud had published warnings about cryptocurrency scams, so HSBC should've had a good understanding of the risk of these scams and how they work. Even though Mrs M was transferring funds to an account in her name, HSBC ought to have been on the lookout for unusual and out of character transactions – which, as I've explained, in this case I consider Mrs M's payment of £5,000 was. And while the transfers were made to a newly open account in her name, scams involving cryptocurrency were well known to banks by this time. And where payments were also out of character, I'm persuaded potential losses were foreseeable to HSBC.

Overall, I'm satisfied HSBC could have prevented Mrs M's losses from the point she made the payment on 22 April 2022. Had it intervened, as I think it ought to have done, I think the loss of this and subsequent payments Mrs M made from her HSBC account could have been prevented. It follows that I think HSBC is at least, in part, responsible for the money Mrs M has lost.

Should Mrs M bear some responsibility for her losses?

I've also thought carefully about Mrs M's role in what happened. I understand that Mrs M felt the investment platform and its advisors appeared professional, and that she built a rapport. But I'm afraid I think Mrs M ought to have had more concerns along the way about what she was being told.

I can't see that she carried out reasonable due diligence. Mrs M has said she was told she could receive substantial returns, with the investment having risk free guarantees. I think this ought to have appeared to her as concerningly unrealistic, not least given the speed at which the scammers claimed Mrs M's initial payments made profits.

I'm also mindful that Mrs M doesn't seem to have sought any clarification as to why she was seemingly making payments to multiple individuals, rather than to an investment company. As well as this Mrs M doesn't appear to have questioned the various requests for payment for fees she was receiving.

In and of themselves it's arguable that any one of the above factors, in isolation, may not have been enough to alert Mrs M. But when taken collectively, I'm persuaded there was

enough going on that ought to have given Mrs M cause for concern that things were not as they seem.

I don't say any of this to diminish or downplay the fact that Mrs M has been the victim of a cruel and cynical scam. I sympathise with her for that and I appreciate that she's told us about how her circumstances were difficult at the time. I don't doubt what Mrs M has said about her medical conditions. But I've not seen anything to suggest that because of her condition Mrs M couldn't have proceeded with more caution than she did. Mrs M was interested in investing – a decision she proactively made. She found the advert online and passed on her contact details. Given this, I'm not persuaded that it would be unreasonable to have expected Mrs M to have taken more steps than she did to validate things before proceeding.

Overall, I can't see that Mrs M had enough basis to reasonably satisfy herself that this was a genuine investment, rather I think she's taken things at face value. So I don't think I can fairly hold HSBC solely responsible for Mrs M's losses.

Lastly, I've considered whether HSBC should have done more to try to recover Mrs M's money. But as the payments went to her own account, there wasn't anything more that HSBC could reasonably do there, as the money was subsequently moved onto fraudsters, so there would have been no prospect of HSBC recovering any of the money.

Putting things right

For the reasons explained above HSBC UK Bank Plc should now:

- Refund Mrs M 50% of the money lost, being £37,140 (less £5 which remains on Mrs M's EMI account).
- Pay 8% interest on this amount, from the date the payments were made to the date of settlement.

My final decision

My final decision is that I partially uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 January 2024.

Stephen Wise
Ombudsman