

## **The complaint**

Ms P complains that HSBC UK Bank Plc didn't do enough to prevent her losing money to a scam.

Ms P has used a representative to bring her complaint, but for ease of reading, I'll mostly just refer to Ms P herself.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In December 2020 Ms P reported to HSBC that she'd made a series of payments as the result of a scam. HSBC advised her at the time that as the payments had been made to an account in her own name, they couldn't help. They referred her on to the other business she had an account with (which I understand to be a cryptocurrency provider 'C').

On 1 February 2023 Ms P's representative wrote to HSBC requesting reimbursement for 26 payments made between August and December 2020 which she said were as the result of a romance / investment scam. They said Ms P had met someone online who had later tricked her into making payments to a fake investment. HSBC responded and said they wouldn't treat this as a case of authorised push payment fraud as Ms P had transferred the money to an account in her own name and provided referral rights to our service.

On 14 March 2023 Ms P's representative wrote again to HSBC and clarified that the claim was actually in relation to a loss of £46,850.93 which arose from 19 payments made between August and November 2020. HSBC reiterated their position from their previous response.

The matter was referred to our service and one of our Investigators didn't recommend it should be upheld. In summary he wasn't persuaded all the payments Ms P had mentioned were made as the result of a scam, and for those that were, he didn't think there was a reasonable basis upon which to ask HSBC to provide any redress. Ms P didn't accept this outcome and asked for an Ombudsman to review her complaint.

## **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.

Having done so, I've reached the same outcome as our Investigator and for similar reasons. I know this will be disappointing for Ms P, so I'll explain why.

Which, if any, of Ms P's payments were made as the result of a scam?

The circumstances of the scam that Ms P has described are that she met an individual on a dating website. Over a period of weeks they formed a friendship and ultimately he tricked her into making payments towards a scam investment which involved him pretending that he worked for a genuine business.

Ms P initially alleged that the scam payments took place between 2 August and 15 December 2020. She is now alleging that 19 payments made between 2 August and 23 November 2020 were made as the result of a scam – she says the payments after that date were her doing further investments to try to make her money back. Ms P has also provided evidence of the text messages between her and the scammer.

As there is conflicting information here (and I accept Ms P's memory may have faded with time) I must first make a finding as to which payments were part of the scam, and which were Ms P investing in her own right.

Ms P's bank statements show that she had been making payments to C as far back as October 2019. And whilst Ms P isn't seeking reimbursement for payments from that time, it does indicate that she was already investing in cryptocurrency, before the involvement of the scammer. And the first time the scammer persuades her into making a payment appears to be on 22 October 2020 when the following exchange takes place:

**Scammer:** *"One can become a referral with as low and £1000 which is about 0.1 btc."*

**Ms P:** *"Count me in then, Fed up with [C] 🙄 I did not make anything with them sold low bought high."*

**Scammer:** *"Lol, great."*

Ms P then goes on to make a £1,000 payment from her HSBC account to C on 23 October 2020. On balance, I think this is the first payment she made towards the scam. I'm not persuaded any of the previous payments can fairly be said to have been made as a result of the scam. I find the message history to be persuasive evidence of this.

Ms P's most recent submissions also only referred to payments up until 23 November 2020. But the message history between her and the scammer indicates this wasn't the case. One strong example of this is on 30 November 2020 when Ms P said to the scammer: *"send me the wallet address for today and I will make the remaining transfer when I get home."* Whilst this could have been with reference to funds already credited to C, I think it shows that the scam was ongoing at that point. And on balance, I think it's likely the payments at that time from HSBC to C were also part of the scam.

The first evidence I have that Ms P was certain she'd been the victim of a scam, is an email she has shared of her reporting this to the dating website on 11 December 2020. I think it's implausible that Miss P would have continued to make payments towards the scam, once she had discovered it. So I don't think any payments after that date were as a result of the scam.

Overall, on balance, I think this leaves the following payments (from 23 October until 8 December) as those that were made as a result of the scam. If a payment was made to C and returned the same day it has been considered as part of the account activity, but I've excluded it from the table. Further to this, I'm aware that following the discovery of the scam, there was a transfer from C back to Ms P's HSBC account on 20 December 2020 for over £11,400. Were I upholding this complaint, I'd need to consider whether that payment included any of the funds Ms P had sent during the scam – but as I'm not requiring HSBC to pay anything, I don't need to establish this.

Date	Event	Beneficiary / Payer
23 October 2020	£1,000 Bill Payment	C
2 November 2020	£5,000 Bill Payment	C
3 November 2020	£750 Bill Payment	C
6 November 2020	£383.07 Credit	C
11 November 2020	£3,000 Bill Payment	C
11 November 2020	£1,000 Bill Payment	C
12 November 2020	£3,100 Bill Payment	C
12 November 2020	£1,000 Bill Payment	C
13 November 2020	£6,500 Bill Payment	C
25 November 2020	£4,000 Bill Payment	C
26 November 2020	£4,250 Bill Payment	C
27 November 2020	£1,500 Bill Payment	C
27 November 2020	£1,600 Bill Payment	C
30 November 2020	£3,300 Bill Payment	C
30 November 2020	£600 Bill Payment	C
3 December 2020	£300 Bill Payment	L
8 December 2020	£1,000 Bill Payment	L

Were the scam payments so unusual that HSBC ought to have done more before processing them?

Ms P's previous account history includes payments going back to 2019 towards cryptocurrency (and specifically the same payee, C). These include but aren't limited to:

- five payments on one day in October 2019 to C which together totalled £9,000.
- two payments for £3,000 each on consecutive days in January 2020.
- a payment for over £10,000 in March 2020.
- a payment for £6,700 in May 2020.
- a payment to C for £10,000 in August 2020.
- payments for £6,800 and £5,000 (both to C) on consecutive days in September 2020.

And it is in the context of the above payments (and others like them) that I don't think any of the payments towards the scam would have stood out as so unusual, suspicious or potentially indicative of fraud such that HSBC ought to have done more at the time. The scam payments were a continuation of the established way in which Ms P used her account. So I can't say that HSBC acted unfairly when following Ms P's instructions and processing the payments without taking any additional steps.

However, for the one payment listed above on 8 December 2020 and which went to L, there is evidence that HSBC did intervene in that payment. There was a call between Ms P and HSBC which I've listened to. On the call the HSBC agent asked some questions and provided some generic warnings about scams.

I have to keep in mind that the payment being questioned was for £1,000 and wasn't something that I would have necessarily expected HSBC to have intervened in. And the main purpose of the call seemed to be to check that it was authorised by Ms P, and the call achieved this. But once there is interaction, I'd expect HSBC to take advantage of that opportunity to speak with their customer. I think the adviser could and should have gone further in the questions asked and warnings provided. But overall, this doesn't change my mind as to the outcome of this complaint.

This is because even if HSBC had gone further, I'm not persuaded this would have made a difference. I say this because within the chat history there is evidence that on 13 November

2020 Ms P shared a link with the scammer which included details about online romance scams. The following exchange then took place:

**Ms P:** (in reference to the link) *"Gosh you are ticking all the boxes."*

**Scammer:** *"It's sad that's what you think about me. I love you and one thing I can't stoop so low to do is to be dishonest about my personality."*

**Ms P:** *"I do not think that's my problem."*

I think the above exchange makes clear that Ms P was fully aware of the possibility of her 'friend' being a scammer. The scammer managed to talk her round and persuaded her to continue making payments. But as she was already well aware of the risk of this type of scam, I'm not persuaded that any reasonable level of intervention by HSBC would have made a difference to Ms P instructing the payment. And I don't think this is a case where HSBC should have refused her instruction altogether.

So overall, I'm not persuaded that HSBC ought to have done more before processing the payments to C (which was already an established payee) or the £300 payment to L. And I'm not persuaded that any reasonable level of interaction in relation to their call about the £1,000 payment to L would have made a difference to Ms P going ahead.

#### Recovery.

I don't think HSBC should have done more when Ms P reported the scam with regard to recovery efforts. As Ms P was in control of the account with C, had anything remained, she could have obtained this herself. And I can see from the evidence provided that she did attempt such a recovery, sadly without success.

#### Summary

Ms P's complaint form to our service also mentioned that she would like HSBC to pay her £500 compensation and to cover any legal fees she's incurred. As I don't think HSBC fairly and reasonably caused Ms P's loss or that they've provided poor service, there isn't a reasonable basis upon which I can require them to provide redress or compensation.

The choice to use a representative to bring her complaint was Ms P's. And if she has incurred costs in doing so, that isn't something that I think HSBC are responsible for.

I'm sorry to hear Ms P lost so much money to a scam, particular one of this nature where it's clear her emotions were preyed upon. But my role requires that I remain impartial, despite my natural sympathy. And for the reasons I've explained, I'm not upholding this complaint.

#### **My final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 27 November 2023.

Richard Annandale  
**Ombudsman**