DRN-4344917

The complaint

Mrs W complains that HSBC UK Bank plc didn't do enough to protect her when she was the victim of a crypto investment scam.

Mrs W is being supported by a representative, but for ease, I'll refer to Mrs W throughout this decision.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

Around August 2021 Mrs W was introduced to an investment opportunity by a friend who had unknowingly been investing in a crypto scam since March 2021.

Mrs W contacted the scammer via WhatsApp. He said he worked for an investment company (which I'll refer to as 'C') and was very prominent on social media. He suggested to Mrs W that she invest in crypto and said he would help her – which included the setting up of an account with a well-known legitimate cryptocurrency exchange platform (which I'll refer to as 'B'). Payments were then sent onto a trading platform (which I'll refer to as 'M').

Mrs W has told us that she initially started making payments towards the investment from a current account with another bank (Bank A). These payments totalled over £100,000 and were made to individuals as part of 'B''s peer to peer lender process. Bank A didn't intervene in any of these transactions.

Mrs W said she got a return on the investment of around £3,700 – which was credited into her account with Bank A.

Mrs W opened a new account with HSBC in September 2021. On 29 November 2021 she deposited £150,000 into the account from a savings account she held with Bank A. The funds formed part of an inheritance from her late husband's estate and included funds from the sale of her property.

On 6 December 2021 Mrs W referred a friend to 'B' and got a £11.88 referral fee, which she paid into her HSBC account.

Between 14 December 2021 and 27 February 2022 Mrs W made 23 payments from her HSBC account to 'B' (and to 'B's payment processing company – which I'll refer to as 'S') ranging from £3,000 to £10,000 totalling £131,000. She got two further returns on her investment. One on 10 February 2022 for £1,448.37 and one on 14 February 2022 for £1,476.00.

Mrs W put the reason for the payments as '*buying goods and services'*. The transactions were as follows:

Date	amount	method	payee
14/12/21	£5,000	Visa debit card	‘B’
14/12/21	£5,000	Visa debit card	‘B’
16/12/21	£10,000	Visa debit card	‘B’
21/12/21	£10,000	Visa debit card	‘B’
31/12/21	£3,000	Visa debit card	‘B’
4/1/22	£10,000	Visa debit card	‘B’
7/2/22	£5,000	Visa debit card	‘B’
7/2/22	£5,000	Visa debit card	‘B’
8/2/22	£5,000	Visa debit card	‘B’
8/2/22	£5,000	Visa debit card	‘B’
10/2/22	£5,000	Visa debit card	‘B’
10/2/22	£5,000	Visa debit card	‘B’
10/2/22	£8,000	Visa debit card	‘B’
18/2/22	£200	Online transfer	‘S’
21/2/22	£5,000	Online transfer	‘S’
21/2/22	£9,800	Visa debit card	‘B’
22/2/22	£5,000	Online transfer	‘S’
24/2/22	£5,000	Online transfer	‘S’
24/2/22	£5,000	Online transfer	‘S’
26/2/22	£5,000	Online transfer	‘S’
26/2/22	£5,000	Online transfer	‘S’
27/2/22	£5,000	Online transfer	‘S’
27/2/22	£5,000	Online transfer	‘S’
Total	**£131,000**		

HSBC didn’t intervene in any of the transactions. But it did issue a standard warning to Mrs W before she made the first online payment to ‘S’ about scams relating to the purchasing of goods and services.

Mrs W says she realised she’d been the victim of a scam when she was unbale to withdraw a large sum of money but was told she had to pay a fee of 20%. Her account with ‘M’ was then frozen.

Mrs W contacted HSBC about the scam on 25 May 2022 and it initiated recovery of the funds paid to ‘S’ on 26 May 2022, but no funds remained. HSBC said in respect to the payments made to ‘B’, the Visa Chargeback rules didn’t apply.

HSBC didn’t consider it was responsible for Mrs W’s loss. It said she had transferred the funds to a legitimate crypto exchange account in her name and in her control.

HSBC said had Mrs W used the correct payment reason (making an investment) – she would have been provided with a more tailored warning. But it thought any intervention was unlikely to have made a difference given Mrs W was transferring funds to a legitimate company and had done no precautionary checks before making the investment.

Unhappy with HSBC’s response, Mrs W referred her complaint to the Financial Ombudsman. She thought HSBC should’ve intervened at the point she made the first payment given its size and because a payment into her account of £150,000 had been made shortly before. Mrs W thought this, combined with the fact the payment was to a cryptocurrency exchange, should’ve been of concern to HSBC. And if HSBC had intervened and asked appropriate probing questions, Mrs W said the scam would’ve been uncovered and her loss prevented.

Mrs W said she had caried out due diligence before deciding to invest with ‘C’- not just relying on her friend’s recommendation. But the sophisticated nature of the scam and social media presence of the scammer, combined with her vulnerability at just having lost her husband and lack of investment experience, gave her no cause for concern. Mrs W also found ‘M’’s trading platform to be professional and of a high quality.

Mrs W couldn’t recall why she’d used the wrong payment reference – but believed HSBC should’ve still been alerted to the payments given their size and destination.

One of our Investigators considered the complaint and upheld it in part. She said HSBC should’ve intervened from the £10,000 payment made on 16 December 2021. And if it had intervened, our Investigator thought the scam would’ve been uncovered and the loss prevented from that point. She obtained information from Bank A – who confirmed no interaction had taken place with Mrs W about the investment being a scam – and so she didn’t believe this impacted any interactions HSBC would’ve had at the point of the 16 December 2021 payment.

She did however believe Mrs W should be responsible for 30% of the loss – believing she should’ve done more to check the legitimacy of the investment – particularly given the funds came from an inheritance and house sale. And because Mrs W hadn’t disclosed the correct payment reason – impacting HSBC’s ability to provide a more tailored written warning.

Our Investigator agreed the Visa Chargeback rules don’t apply in respect of the payments to ‘B’ and was satisfied HSBC had done all it was required to do to try and recover the payments made to ‘S’ from the beneficiary bank.

Mrs W accepted our Investigator’s findings. HSBC didn’t agree and asked for an Ombudsman to issue a final decision.

HSBC believed it needed more information from Mrs W about how the investment had come about the actions she took. In particular, it wanted to know:

- What a credit into Mrs W’s HSBC account from her account with ‘B’ for £11.88 related to.
- When her account with ‘B’ was set up and information on the transaction history which predated the disputed transactions.
- Did Mrs W pay or receive any funds into her account with ‘B’ from elsewhere.
- Why Mrs W used the wrong reference for the payments.

HSBC also made the point that Mrs W’s current account had only recently been opened before the £150,000 credit was paid into it on 29 November 2021. With the main actively thereafter being the payments to ‘B’ and ‘S’. HSBC wanted to know where the £150,000 had been transferred from and if it was from an account in her name – why Mrs W hadn’t used that account to make the payments to ‘B’ and ‘S’.

HSBC also suggested that as Mrs W had initiated the investment scam some months before through Bank A, she was likely heavily under the spell of the scammer by the time she started making payments from her HSBC account. And she continued to do so, despite, it suspected, being provided with warnings from Bank A. HSBC also thought it likely that Mrs W would’ve gone back to making payments from Bank A if it had refused to release them.

This, coupled with the fact Mrs W had been dishonest about the reason for the payments by using the wrong payment reference, led HSBC to conclude that any intervention it might’ve made was unlikely to have made a difference.

On 22 August 2023, I issued a provisional decision not upholding this complaint. For completeness, I repeat my provisional findings below:

'In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to consider relevant 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 general terms, a bank is expected to process payments that a customer authorises it to make. This is set out both within the account terms and conditions as well as the Payment Services Regulations. These regulations explain that a payment can only be authorised if the payer has consented to it. This is important because, generally speaking, account holders will be liable for payments they've authorised, and banks will be liable for unauthorised payments. I've taken this into account when considering what's fair and reasonable in the circumstances of this complaint.

As a matter of good industry practice, I consider banks should also take proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. This is particularly so considering the rise in sophisticated fraud and scams in recent years – which banks are generally, more familiar with than the average customer.

So, taking all of this into account, I need to decide if HSBC acted fairly and reasonably in its dealings with Mrs W when she made the payments, specifically whether it should've done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if HSBC ought to have done more than it has already done to recover the funds after Mrs W reported the scam.

<u>Should HSBC have intervened in the payments?</u>

HSBC hasn't disagreed with our Investigator's view that the £10,000 payment made on 16 December 2021 should've flagged as suspicious and triggered an intervention. And I also agree with the Investigator on this point. A payment of £150,000 had recently been paid into the account, and the £10,000 payment was the third payment to be made to 'B' in just two days. I think this should've been a concern to HSBC.

<u>Would intervention have made a difference?</u>

The issue in contention here is whether any intervention by HSBC would've made a difference and prevented Mrs W's loss. I've thought very carefully about this point, and fully considered all the information provided by both parties. I've also taken account of the wider surrounding circumstances to help me decide how likely it was, on balance, any intervention by HSBC would've prevented Mrs W's loss.

HSBC are the experts here – and should've known the common hallmarks of a crypto investment scam. Regardless of the reason Mrs W gave for the transactions (which arguably wasn't incorrect given she was buying goods (crypto)), HSBC could see she was buying crypto, albeit through a legitimate crypto exchange. It should've known this is often part of the scam process to make it look more convincing and harder to detect, and harder to recover lost funds. It could also see that Mrs W had made several large payments in close succession. Against this backdrop, I think any interaction between HSBC and Mrs W should've been tailored to the possible risks involved of investing in crypto.

It's not for us to dictate what questions a bank should ask, but I think it would've been reasonable here for HSBC to have asked Mrs W whether there was a third party involved, how she found out about the investment, what she understood about how the investment worked and whether she'd had any returns on the investment. I'd also have expected HSBC to ask Mrs W about the source of the £150,000.

I've thought very carefully about what Mrs W would've said in response. Of course, I can't know for sure, so I've thought about what I think is more likely than not to have happened, considering the particular circumstances of this case.

Mrs W's representatives have mentioned her limited spoken English, but it hasn't been suggested this would've been an issue if she had been contacted by HSBC about the payments and asked probing questions. And so, I don't see this as a significant point here.

I can't see that Mrs W was given a cover story by the scammer and hadn't invested in crypto before. So, with that in mind, if HSBC had asked Mrs W if anyone was helping her, I think the presence of her friend who introduced her to the investment and 'C' would more than likely have come to light. Mrs W is also likely to have divulged that she had been investing since August 2021 – via her account with Bank A – and had received returns on her investment. I think she also would likely have told HSBC about the source of the £150,000.

This information ought to have been of some concern to HSBC, and even if the interaction with Mrs W alone wasn't enough to 'break the spell' and uncover the scam, I'd have expected HSBC to strongly suggest to Mrs W the need to check the investment was legitimate.

But I must now think about whether this would've made a difference and prevented Mrs W's loss.

Firstly, whilst Mrs W was contacted by 'C', this was after she'd spoken about investing in crypto with her friend – and so she wasn't contacted out of the blue or pressured into investing – it had been her choice. And by her own admission, 'C''s online presence and the sophisticated nature of the scam – gave Mrs W no reason to doubt the legitimacy of the investment.

Secondly, there were no regulatory or other credible warnings at that time to have alerted Mrs W to this being a scam. So, if she had carried out checks, she isn't likely to have seen anything of concern. Also, Mrs W wasn't at the start of her relationship with the scammer at the point when HSBC should've intervened. She'd already invested over £100,000 via Bank A and had received returns on the investment, further reinforcing that the investment was genuine despite any warnings HSBC might've given.

Thirdly, it appears that Mrs W specifically opened the account with HSBC to facilitate the investment – presumably because she was no longer able to make payments from Bank A given restrictions it put in place from June 2021 about making payments direct to 'B'. She also introduced a friend to 'B' for which she received a referral fee. This all demonstrates how committed Mrs W was in the investment – and suggests it's likely she would've found another way to make the payment if HSBC had refused to process it.

Of even more significance here is the influence Mrs W had, and continues to have, from the friend who introduced her to the investment. And whilst I appreciate Mrs W has told us she didn't rely solely on the advice of her friend when deciding to invest, I think it is more likely than not that she would've sought reassurance from her friend if HSBC had advised her to check the legitimacy of the investment.

As I understand it, Mrs W's friend (and her husband) had been investing a significant amount of money from both single and joint accounts as part of the same scam since March 2021- six months prior to Mrs W first getting involved. Her friend had investment experience (an investor visa and an investment portfolio) – and had also been able to make several returns on her investment. And so, I have no reason to doubt that Mrs W wouldn't have had complete trust in her friend.

This suggests to me that any concerns Mrs W might've had about the investment would've been alleviated by reassurances given by her friend. And so, I think it's more likely than not Mrs W would've proceeded with the transactions here – even if HSBC had done more to alert her that the investment had all the hallmarks of a scam. I think it would've taken something more credible, like regulator warnings about 'C', to have made Mrs W pause and think more about her decision to invest. And in the absence of such warnings, I don't think any warning from HSBC would've made Mrs W do anything differently.

Taking everything into account, I don't disagree that Mrs W has been the victim of a sophisticated crypto investment scam. And I think HSBC should've done more to try and protect her. But I think this is unlikely to have made a difference. Mrs W was unfortunately, completely caught up in the scam, as was her friend who'd been advising her, and had no reason to question it at that time. So, overall, for the reasons I've explained, I'm not persuaded intervention from HSBC would've made a difference and prevented Mrs W's loss in the particular circumstances of this case.

Given I've found that it's more likely than not intervention from HSBC wouldn't have made a difference and exposed the scam, it is unnecessary for me to go on to consider whether Mrs W should share any responsibility for the loss she incurred by way of contributory negligence.

<u>*Did HSBC do enough to try and recover the lost funds?*</u>

I'd expect HSBC to do all it could to try and recover the lost funds.

In relation to the payments to 'S', HSBC sought to recover the funds immediately after it was told about the scam in May 2022, but unfortunately no funds remained. There was nothing more HSBC could've done here. Furthermore, Mrs W received crypto in exchange for the payments to 'S' and subsequently sent it on to 'M'. I'm satisfied there would have been no funds to recover as Mrs W's payments to 'S' were legitimate.

I also don't think HSBC had the option to recover the card payments by way of a Visa Chargeback. 'B' was a legitimate company and so the 'service' Mrs W was paying for – purchasing the crypto – was provided. Mrs W's dispute was with 'M', not 'B', and as 'B' provided the service she paid it for, it's unlikely a Visa Chargeback claim would've been successful. And so, I can't say HSBC could've done anything more here'

I invited Mrs W and HSBC to provide me with any additional evidence or information they wanted me to consider before issuing my final decision.

HSBC accepted my provisional decision and had nothing further to add. Mrs W didn't accept it and provided more information to support her complaint.

Mrs W explained that the friend who introduced her to the investment was a '*friend of a friend'* who she met on a coach trip, and she didn't know her before the investment opportunity was discussed during that trip. She said whilst this friend has been supporting her in trying to get her money back, they were not close friends at the time of the investment, and there was no communication between them until the scam came to light.

Mrs W also said that the friend only had limited investment experience in stocks and shares, and so was not an experienced investor. And she only had an investment visa due to her high wealth – and this wasn't in place at the time of the scam.

Mrs W explained that she hadn't referred another friend to the scam – rather they'd found out about the investment at the same time as she did (during the coach trip), and she'd only referred the friend for an account with 'B'. And so, Mrs W said this shouldn't be used to support the point that she was under the spell of the scam.

Mrs W thought it unlikely any answers she gave to HSBC's probing questions would've satisfied it that she wasn't at risk of financial harm. She said she was in a vulnerable state at the time – having just lost her husband – and was investing a considerable amount of money from an inheritance into a high-risk crypto investment '*that followed a familiar scam pattern'*. Mrs W said she wasn't an experienced investor and didn't understand cryptocurrencies.

Mrs W said HSBC should've applied the banking protocol due to the specifics of this case. She said the account with HSBC had been newly opened, whilst she was in a vulnerable state, and it exhibited '*highly concerning behaviour'.* Mrs W reiterated that she'd have been unable to provide answers to HSBC's questions to satisfy it that the investment was genuine.

Had the banking protocol been invoked, Mrs W believed the scam would've been uncovered. She said it's likely she'd have been advised to '*test*' the investment by trying to withdraw all her profits – which she said we know from what happened in this case, would've resulted in the scam being uncovered.

In conclusion, Mrs W said there were huge failings here by HSBC and it's unfair that it should share no responsibility for her loss.

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.

As Mrs W has rightly pointed out, the key point here is whether the tailored intervention - which all parties agree is the action HSBC should've reasonably taken - would've uncovered the scam and prevented her loss. I've thought very carefully about that, including the points Mrs W has made in response to my provisional decision. Having done so, I still think this case shouldn't be upheld.

I would firstly add that we've tried to engage directly with Mrs W to obtain her first-hand testimony about, amongst other things; the circumstances surrounding the scam; what her expectations of the investment were (was this a long-term investment for example); and what led to the HSBC account being opened. Unfortunately, this engagement hasn't been forthcoming. So, I've had to base my findings on the balance of probabilities, based on the information that's been made available by all involved parties. And to help me do that, I've also looked at the wider circumstances surrounding this case.

Mrs W has spoken about her vulnerability at the time of the payments from her HSBC account, and I don't doubt how difficult things were for her having recently lost her husband.

But I would counter that with the fact Mrs W was able to make important financial decisions about her money and actively engage in the investment from August 2021, four months before HSBC became involved. She was also able to open the HSBC account specifically, it seems, to facilitate the payments towards the investment. And so, I don't think the evidence suggests Mrs W's vulnerabilities made her unable to make decisions about the management of her finances.

It's been helpful Mrs W has provided some clarity about the relationship with the friend who introduced her to the investment. And how the referral fee came about. But aside from that, I still believe Mrs W was so invested in the scam at the point HSBC should've reasonably intervened, that it is unlikely, on balance, to have uncovered the scam and prevented her loss.

Neither Mrs W, nor her friend, had any concerns about the scam until they tried to make large withdrawals. I've noted Mrs W's comments that she didn't have any communication with her friend until after the scam was uncovered – but I still maintain that any concerns raised by HSBC would've likely prompted Mrs W to contact the friend for reassurance. And despite not having as much investment experience as first thought – the fact the friend had been investing since March 2021 (along with her husband), had some investment experience in stocks and shares, and had no cause for concern - would've likely helped to satisfy any concerns Mrs W might've had.

But aside from any reassurances Mrs W may or may not have got from her friend, or anyone else she knew to be involved in the investment, I can't ignore the fact she wasn't at the start of her relationship with the scammer at the point HSBC should've intervened. Because of that, I maintain it would've taken something more credible, such as a regulatory warning, to have caused Mrs W to stop and think seriously as to whether the investment was in fact genuine.

Mrs W has said HSBC should've invoked the banking protocol, and that this would've resulted in the scam being uncovered. Whilst I accept it's likely Mrs W's responses to questions HSBC asked of her would've resulted in it suggesting that she carry out further checks – I don't think that intervention alone*,* at that time, would've resulted in the banking protocol being invoked.

Whilst Mrs W's situation had some hallmarks of a scam – there were no regulatory warnings against 'C', and she hadn't seen any negative reviews that concerned her. And other people she knew had been investing (at their choice) for a while and had received returns on their investments. So, I don't agree with Mrs W that HSBC would've had enough of a concern to have invoked the banking protocol had it intervened in the payments.

Taking all this into account, whilst I accept HSBC should've done more, I'm not persuaded that, given the specific cicusmances of this case, that intervention would've prevented Mrs W's loss. And so, I won't be asking HSBC to take any action.

Neither party made any comments on my provisional finding in respect to whether HSBC did enough to try and recover the lost funds. So, I see no reason to depart from what I said.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision **before 14 October 2023.**

Anna Jackson
Ombudsman