

## **The complaint**

Mrs F complains about the actions of HSBC UK Bank Plc when she was tricked into making payments on her debit card as a result of a scam.

Mrs F is being represented by a claims management company, but for ease of reading I'll only refer to Mrs F in my decision.

## **What happened**

In 2017 Mrs F came across a merchant, I'll refer to here as 'N', advertising investments in cryptocurrencies, on social media.

Following conversations with N, Mrs F made four international debit card payments, totalling around £15,000 to N of £750, £1,000 and £250 on 12 June 2017 and a further £13,000 on 30 November 2017. Mrs F was then told by N's representative that he was going on holiday for two weeks and Mrs F was unable to speak to N again.

In 2022 Mrs F raised a claim with HSBC. She said that the first two payments she made in June 2017 were stopped by HSBC. But following the conversation with HSBC the payments were released. HSBC considered the complaint but decided to reject it. Mrs F remained unhappy, so she brought her complaint to this service.

Our investigator didn't think the complaint should be upheld. He said Mrs F had raised the dispute too long after the payments had been made to successfully raise a chargeback. The investigator said that he didn't think HSBC could've done more to prevent the scam when it stopped the first two payments in June 2017 as there were no warnings about N until after the payments had been made. And that the £13,000 payment she made wasn't sufficiently unusual compared to her previous account activity.

Mrs F disagreed and has asked for an Ombudsman's review. She said that the payments she made towards the scam were unusual because they were made internationally, and some of her previous large payments had been to savings accounts in her own name. She added that HSBC failed to ask her probing questions in 2017 about the payments and if it had then it would've more than likely uncovered the scam.

## **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 conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mrs F has been the victim of a cruel scam. I know she feels strongly about this complaint and this will come as a disappointment to her, so I'll explain why.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board

and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

I've firstly considered whether HSBC should've done more to stop all the payments Mrs F made towards this scam. It is common ground that Mrs F authorised the scam payments totalling £15,000. I accept that these were authorised payments even though Mrs F was the victim of a scam. So, although it wasn't her intention to pay money to the scammers, Mrs F is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice at the time, there are circumstances where it might be appropriate for HSBC to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud. So, I have looked into what this means for this case and whether HSBC should have done more here to prevent the payments in dispute.

Here, Mrs F sent three payments in June 2017. Although they were sent internationally, the payments were for relatively small amounts of £750, £1,000 and £250. Mrs F says HSBC stopped the first two payments and spoke to her, but it failed to ask any probing questions about why the payment was being made. HSBC has said that due to the passage of time it no longer has a record of those conversations. So, I need to decide whether HSBC asking any questions of Mrs F at the time would've – more likely than not - made a difference.

I think it would be worth mentioning here that although HSBC was expected to be on the lookout at the time for unusual payments to help prevent a customer losing their money, it's knowledge of well-known cryptocurrency scams, at the time the payments were made in June 2017, wouldn't have been at the same level it is now. And I also can't reasonably hold HSBC to a later and more stringent standard provided by later regulations and good practice.

So, in order for HSBC to step in and clearly tell Mrs F this was likely a scam and provide her with a clear fraud and scams warning it would need to be satisfied that – at the time of the payments – that's what N was doing.

Unfortunately, there are a great deal of diverse and sophisticated scams for both banks and consumers to try and stay safe from. The sheer volume of potential risks somewhat limits the expectations on the ability for HSBC to identify and keep track of every scam: it is not expected to act as a detective or regulator. But one way to counter such fraudulent activity and protect consumers is to take note of the regulator's information and warnings.

Crucially, I've seen that there were only warnings about N from the Financial Conduct Authority (FCA) and other international countries after the payments were made. So, HSBC wouldn't have had any persuasive and clear regulatory information to refer to here. Based upon what I know, Mrs F was convinced by a very sophisticated scam that she was investing in a genuine firm and potentially prosperous venture. She's said in her evidence to this service that she recalls N explaining how the investment worked and that it seemed friendly and positive. She was asked to provide ID to verify her account, given passwords to access it and required to download a trading app which installed confidence in her that N was a genuine company.

I've also noted Mrs F still thought this was a genuine investment opportunity five months later when she agreed to invest a much larger sum. Indeed, it's common ground that Mrs F only began to entertain doubts because N ceased communication with her. Naturally, HSBC would've been unaware of this at the time of the first payments, given the sequence of events. So, I'm persuaded - on balance - that Mrs F would've likely relayed this confidence in the purpose of the payments to HSBC if she had been questioned about why the payment was being made.

I also wouldn't expect HSBC to pay too much attention to online reviews that may have been available because it's not possible to verify those comments. That would be up to the consumer to review and consider before entering into an investment or sending payments to a merchant.

So, overall, I don't think - on balance - HSBC could reasonably have concluded during a telephone conversation with Mrs F that N was more likely than not operating a scam. And because the next and much larger payment of £13,000 wasn't sent until November 2017, I'm satisfied the earlier international payments, and the conversation I've mentioned above, created a pattern of spending on Mrs F's account that meant sending further international payments wouldn't have seemed unusual. So, I don't think the payments being international meant that, in this case, HSBC could've reasonably stepped in here.

I note Mrs F has said that the size of the payments she made to N were sufficiently unusual for her account and this should've been noticed by HSBC. But I don't agree. As the investigator has mentioned, Mrs F did make payments to other accounts, albeit to some in her name, ranging from £4,500 to £15,000. I'm satisfied these payments established a pattern of spending on her account where it wasn't unusual for her to send larger payments from time to time.

So, that means I don't think HSBC should've taken any further action to stop the payment and speak to Mrs F about it. Overall, I don't think the later payment made to the scam stood out as sufficiently unusual that it's reasonable to have expected HSBC to have intervened.

### *Chargeback*

The chargeback process is voluntary and run by the card scheme whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'.

So, I've considered whether HSBC acted reasonably after it was made aware of the scam. Here the payments were made via a debit card. But I'm afraid the investigator was correct when he said the claim was made more than 540 days after the payments were sent which means they were outside of the relevant rules of the scheme. So, HSBC didn't treat Mrs F unfairly by not raising a chargeback here.

I'm sorry to hear Mrs F has been a victim in this way, but I don't think HSBC are responsible for her loss and so I can't fairly ask them to do more.

### **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 F to accept or reject my decision before 13 December 2023.

Mark Dobson  
**Ombudsman**