

## **The complaint**

Miss K complains that HSBC UK Bank Plc trading didn't do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam.

## **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.

Miss K was a victim of an investment scam. Miss K decided to invest in cryptocurrency after seeing a celebrity endorsement featuring a well-known celebrity discussing the opportunity to make considerable returns. As she had no prior knowledge of investing, Miss K conducted a google search and found a professional-looking website. She completed an online contact form and was later contacted by someone claiming to work for a company I'll refer to as "P".

The broker used a range of tactics to encourage Miss K to invest more money, including using jargon and lies. He convinced her to take out two loans totalling £15,000 and was given access to a portal where she could see her trading account. There were no specific expected returns, but she was told the investment would be better than a bank account.

The broker asked Miss K to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet. When Miss K had tried to make a payment of £3,000, it was blocked by HSBC. In the subsequent call she was asked about the purpose of the payment. She said she was buying cryptocurrency and was given a very detailed scam warning, including advice on check she should do before going ahead with the investment. Miss K told the call handler she was satisfied the investment was genuine and the block was removed.

Between 27 June 2022 and 1 July 2022, she made five payments to a cryptocurrency exchange company totalling £12,442 (the payments were for £1,000, £999, £5,123, £3,321 and £1,999). Towards the end of the scam period, Miss K applied for two loans for £7,500 each to pay what she was told were withdrawal fees on the understanding the broker would pay off the loans. The broker said if she didn't take out the loans, she'd have to pay commission. She realised the broker had lied to her about paying off the loan when she got a notification that a direct debit had been set up for her to pay off the loan.

She contacted HSBC, but it didn't uphold her complaint stating it was unable to refund the money she'd lost as there were no bank errors. It said she'd made larger payments in the past, so the activity wasn't unusual. And it said it was unreasonable to expect it to know the funds would be sent onwards to a scammer's account. It said that when it did flag the payments for additional checks Miss K had told it the payments were genuine. And it didn't accept it should have questioned her more rigorously about the purpose of the payments.

Finally, it said it had declined one of the loan applications because she had already taken out a loan and paid the money to a cryptocurrency exchange, despite saying this loan was for home improvements.

Miss K complained to this service with the help of a representative. They explained that Miss K had trusted the broker was genuine and that she had no knowledge of cryptocurrency or investments and her checks hadn't uncovered anything negative online about the broker or the company he claimed to work for. They argued that if HSBC had contacted Miss K and asked more detailed questions about the circumstances of the payments, it would have been easy to spot that this was a scam. Similarly, HSBC would have been in a position to advise Miss K that taking out a loan wouldn't replace the payment of commission and that celebrity endorsements are a red flag for scams, as is sending money via cryptocurrency exchanges to online wallets and using Anydesk.

The representative explained that Miss K would spend £1,225 each month on direct debits and other scheduled payments. She earns between £1,100 and £1,300 a month and didn't normally make large payments. Her monthly expenditure is for day to day needs, which she makes in several small transactions for bills, food, and fuel throughout the month. They argued that several large transactions totalling £12,442 was out of character and she hadn't previously paid cryptocurrency exchanges.

They accepted HSBC had intervened and blocked some payments, but the broker had told her to lie when asked whether there was a third party involved, having told her HSBC wanted to keep her money as it made interest off of her balance. However, she wasn't given a full cover story, so adequate questioning should have been able to uncover the scam.

The representative also argued HSBC failed to question Miss K appropriately and had it done so, it would have realised she was falling victim to a scam. They argued HSBC should have been aware that scammers often tell victims not to reveal the full story and it should have told her this is a common tactic to mislead the bank and it should have done a lot more to understand what was happening.

Our investigator didn't think the complaint should be upheld because he was satisfied HSBC carried out the correct steps prior to releasing the funds, as well as after being notified of the scam. He explained Miss K had authorised the transfers which were paid to a genuine cryptocurrency exchange companies in her name. He noted her account was blocked on 27 June 2022 and HSBC had contacted her to discuss her account and that during the call Miss K was dishonest about the circumstances of the payments. He was satisfied HSBC had asked the questions he'd expect.

Our investigator was also satisfied that a chargeback request wouldn't have been successful as the cryptocurrency exchange companies Miss K paid had provided the services they were required to provide.

### **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.

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.

I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Miss K 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'm satisfied Miss K 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't

intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Ms K is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Miss K didn't intend her money to go to scammers, she did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I've also thought about whether HSBC could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it did enough to warn Miss K that she could be at risk of financial harm due to fraud.

If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Miss K from financial harm due to fraud. The first payment Miss K tried to make did flag as suspicious on HSBC's systems. I've listened to the call and I agree with our investigator that the call handler did all they could to question Miss K about the circumstances of the payment and to advise her about additional checks she should make before going ahead with the investment.

Despite repeated clear warnings about the risk of scams, including the fact that scammers often tell people to lie to their bank, Miss K maintained that there was no third-party involved and that she had learned about the investment through a friend. The call handler gave very detailed information about the risk of different types of scams and explained the types of checks she should do before going ahead and why.

Having listened to the call, I'm satisfied that Miss K was given effective warnings and advice on how to protect herself from the risk of fraud and that, notwithstanding this advice, she decided to go ahead with the investment. Because of this, I'm satisfied there was nothing more HSBC could reasonably have done to protect her, and, in those circumstances, it doesn't need to do anything else.

### *Chargeback*

I've thought about whether HSBC could have done more to recover Miss K's payments when she reported the scam to it. Chargeback is a voluntary scheme run by Visa 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. Our role in such cases

is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Miss K).

Miss K's own testimony supports that she used a cryptocurrency exchange to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchange would have been able to evidence that it had done what was asked. That is, in exchange for Miss K's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that HSBC's decision not to raise a chargeback request was fair.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Miss K has lost money and the effect this has had on her. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

For the reasons I've 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 Miss K to accept or reject my decision before 6 October 2023.

Carolyn Bonnell  
**Ombudsman**