

## **The complaint**

Mrs G complains that HSBC UK Bank Plc 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.

On 10 February 2021, Mrs G paid £25,000 to a cryptocurrency exchange company via online transfer from her HSBC current account. She later complained to HSBC that it failed to contact her when she made the payment and had it done so, it would have been obvious she was falling victim to a scam as she'd have told it what the payment was for and the fact her husband's broker had access to his computer using 'Anydesk'.

When she complained to this service, Mrs G said HSBC failed to query why she made frequent high value payments into her husband's account between 13 November 2020 and 30 November 2020 and took out a £15,000 loan in February 2021. She also had £47,400 worth of shares from an account she held with another bank paid into her HSBC account.

Her representatives said HSBC should have contacted Mrs G to ask questions around the purpose of the payment, the nature of the checks she made, whether there was a third party involved and if they'd gained access to her husband's computer using remote software. They argued that, had they done so, it would have been obvious her husband's broker was operating a scam and it would have been in a position to give a scam warning and advice on due diligence, which could have prevented her loss.

Our investigator didn't think the complaint should be upheld because she didn't think the payment would have appeared unusual, so she didn't think HSBC needed to have intervened when Mrs G made the payment. She explained Mrs G's account had a long-established history of making payments of significantly large value dating back to April 2020, including large amounts transferred between accounts. She accepted the payment was to a new payee, but she noted Mrs G had made a payment of £40,000 on 22 May 2020, so it wasn't wholly unusual for her to make large payments to new beneficiaries.

Our investigator added that, even if HSBC had intervened, Mrs G had explained that her husband had no concerns that the investment wasn't genuine and had been able to successfully withdraw funds from his trading account on four occasions. She noted there were no negative reports or warnings about the company his broker claimed to work for during the scam period, and there would have been no concerns that the company was unregulated. Further, he had an independent financial adviser and hadn't been cold called. So, she didn't think an intervention by HSBC would have made a difference to Mrs G's decision to go ahead with the payment.

Mrs G has asked for the complaint to be reviewed by an Ombudsman. Her representative has argued that asking Mrs G to transfer the money to a cryptocurrency exchange company

and then onto a wallet matches a known method of fraud and Mrs G had never traded before. They said that at the time of the scam there was information in the public domain about which HSBC ought to have been aware and by the time she made the payment, cryptocurrency scams had risen greatly in frequency.

They maintain Mrs G should have been asked more questions about why she wanted a loan in February 2021 and HSBC's failure to ask questions exacerbated her financial loss. They've also argued it should have asked her about the high value transactions to her husband's account and the payment which was returned in February 2021.

### **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 G 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 that HSBC contacted the beneficiary bank as soon as the scam was reported to it and so there was nothing else it could have done to recover the money. I'm also satisfied the CRM Code doesn't apply to the payments because they were paid to an account in her own name.

I'm satisfied Mrs G 'authorised' the payment 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, Mrs G 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 Mrs G didn't intend her money to go to scammers, she did authorise the disputed payment. 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 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 ought to have intervened to warn Mrs G when she tried to make the payment. If there are unusual or suspicious payments on an account, I'd expect HSB to intervene with a view to protecting Mrs G from financial harm due to fraud.

The payment didn't flag as suspicious on HSBC's systems. I've considered the nature of the payment in the context of whether it was unusual or uncharacteristic of how Mrs G normally ran her account and I don't think it was. This is because, it was to a legitimate cryptocurrency exchange company and while I accept £25,000 is a large amount, taking into account the fact there were several large payments in and out of the account, in particular the payment of £40,000 on 22 May 2020, I don't think it was unusual. So, I don't think HSBC missed an opportunity to intervene when she made the payment.

I've considered the fact Mrs G took out a loan before making the payment and I don't think it makes a difference because of the history of regular transfers in and out of the account. Similarly, I don't think the fact a payment was returned by the merchant shortly before Mrs G made the disputed payment was suspicious or unusual.

Finally, I've also considered the arguments Mrs G's representatives have made about the large transfers Mrs G made to her husband and I accept they might reasonably have given HSBC some cause for concern because she sent £233,644 to him November 2022. However, I don't think additional questioning around these transfers would have made any difference to Mrs G's subsequent decision to go ahead with the disputed payment. This is because, Mrs G's husband had a financial advisor, he'd received withdrawals from his trading account, he had previous investment experience and he was satisfied the investment was genuine. So, I don't think there was anything HSBC could have said that would have changed her mind about sending money to his account.

### *Chargeback*

I've thought about whether HSBC could have done more to recover Ms G's payments when she reported the scam to it. The payment was made to a cryptocurrency exchange company. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Mrs G's payment, 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 against either of the cryptocurrency exchange companies was fair.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Mrs G has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Nationwide 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 Mrs G to accept or reject my decision before 15 September 2023.

Carolyn Bonnell  
**Ombudsman**