

The complaint

Miss D complains that HSBC UK Bank Plc ('HSBC') won't refund the money she lost as a result of an investment scam. She's being supported by a representative. To keep things simple, I'll refer to Miss D throughout this decision.

What happened

The background to this complaint is known to both parties, so I won't repeat all the details here.

In summary, Miss D says she was introduced to the scammer by her ex-husband in March 2022, and that the scammer then persuaded her that she could make huge returns if she invested in cryptocurrency and traded, as instructed, using a platform called MS. A separate account with a cryptocurrency exchange (Binance) was set up in Miss D's name, through which funds would be transferred from her HSBC account onto MS.

A card payment of £4,500 was made to Binance (before being sent to the scammer). Miss D says she was able to log-on and review the activity on the MS platform at any time and was very happy with the returns shown. But that she started to suspect something was wrong when, days after she'd made the payment, she couldn't withdraw the funds she wanted and was instead being asked to borrow and invest more.

The scam was reported to HSBC in July 2022. A formal complaint was later raised and referred to our Service. Our Investigator considered it but didn't uphold it. He concluded that the payment wasn't unusually large or out of character to suggest HSBC should have done more to prevent the scam and there was no potential for a successful chargeback claim.

I issued my provisional decision to both parties in September 2023. I said I wasn't minded to uphold this complaint as I wasn't persuaded HSBC can fairly and reasonably be held liable for Miss D's losses in the circumstances – and I provided the following reasons:

- *It isn't in dispute that Miss D has fallen victim to a scam and I'm sorry to hear about the money she's lost. It's also not in dispute that she authorised the payment she made to Binance, using her HSBC debit card – and the starting position is that banks ought to follow legitimate payment instructions given by its customers.*
- *I note there's disagreement about whether HSBC should have done more to protect Miss D by, for example, intervening on the £4,500 card payment on the basis that it presented a risk and signs of a known and prevalent scam. But I think it's important to note that this transaction was, for all intents, connected to an earlier debit card payment Miss D had attempted – and on which HSBC did intervene. In other words, there had already been activity on her account to trigger an alert at HSBC, so the key question is simply whether that intervention went far enough.*
- *The earlier card attempt (for £5,000) was blocked. When Miss D called HSBC to ask what had happened she was transferred to its fraud prevention team. In that call, Miss D explained she'd tried to make a payment to Binance for the purchase of cryptocurrency. In response, HSBC said it wanted to check Miss D was aware of it*

and if the transaction was genuine. At the end of the call, HSBC told Miss D that the card had been unblocked and she'd need to re-attempt the transaction. It asked Miss D to check the merchant website and gave a generic warning about 'safe account' scams.

- *I would reasonably expect HSBC to have asked probing questions on the information Miss D had given (such as what the payment was for and for the basic surrounding context) with the intention of unravelling a potential scam – and I see no reason why Miss D wouldn't have been open and honest in responding to any of HSBC's further questions if they'd been asked. So, I agree that HSBC missed an opportunity to act on information which should reasonably have alerted it to a potential scam. Having said that, I'm not persuaded that an appropriate warning would have likely stopped Miss D from proceeding with the payment or have ultimately prevented her loss.*
- *I say this partly because this was a sophisticated scam where Miss D herself has explained how she was led to believe that the scammer was entirely genuine. The messages exchanged indicate, as is common with this type of scam, that Miss D believed she was forming a particularly close relationship with the scammer, albeit in a very short time – and she was encouraged by her ex-husband who had talked to her about the 'huge profits' he was making. In my view, she was not only following the advice of someone she thought she could trust, and who she believed was a knowledgeable and successful investor, but also that of her ex-husband who, according to Miss D, had also 'persuaded [her] to invest more'. There's also evidence to suggest that the prospect of making significant returns was something Miss D had already seen play out off the back of a separate credit card payment (which isn't part of this complaint) she'd sent to the scammer days before the £4,500 transaction.*
- *Overall, and on balance, I'm not persuaded that further questioning or an appropriate warning from HSBC would have resulted in Miss D discovering that she was being scammed. And crucially, I've seen nothing to suggest Miss D would have found anything negative about 'MS', even if she had been advised by HSBC to carry out further research into the matter.*
- *I also realise HSBC had committed to blocking some transactions to Binance before Miss D made her payment. But that decision was only in relation to credit cards, due to the increased risk of consumers carrying out risky activity with borrowed funds. HSBC was under no obligation to block debit card payments and didn't act outside its own policy by allowing this payment to go through. HSBC is also under no obligation to provide a refund under the Contingent Reimbursement Model (CRM), as the code doesn't apply to card payments or payments which the payer made to themselves (before being sent to the scammer). And, given the scam was reported some months later, in July 2022, and the payment was first sent to Miss D's own Binance account, it's unlikely HSBC could have recovered the funds through a recall or a chargeback.*

I invited further comments and evidence from both parties. HSBC responded saying it had nothing further to add. Miss D replied saying she doesn't accept the decision.

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.

Given that neither party has added anything further in response to my provisional findings, I see no reason to depart from the conclusions set out above.

It follows that I do not uphold this complaint.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 28 November 2023.

Thomas Cardia
Ombudsman