

The complaint

Mr R complains that HSBC UK Bank Plc (HSBC) didn't do enough to prevent him losing money to a scam.

Mr R has used a representative to bring his complaint, but for ease of reading, I'll mostly just refer to Mr R himself.

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. In November 2022 Mr R was the victim of a scam. He found what he believed to be a genuine investment through social media and as a result made the following faster payments from his HSBC business account.

Date	Amount
16 November 2022	£5,000
16 November 2022	£5,000
22 November 2022	£15,000

Prior to this there had been payments towards the scam of £5 and £750 but these both 'bounced back' from the business they were sent to. The payments that did go through all went to an account in Mr R's own name with a business which specialises in money transfers 'W'. From there I understand Mr R paid it to what he thought was an investment and it was subsequently lost to the scam.

When the scam came to light, Mr R reported this to HSBC who essentially advised that he would need to take this up with W, as they were the point of loss. Mr R complained as he believes HSBC is responsible for not protecting him. HSBC didn't agree they'd done anything wrong and the complaint was referred to our service. One of our Investigators recommended it should be upheld. She thought HSBC ought to have intervened in the second payment on 16 November 2022 and that this would have prevented further losses. She recommended that HSBC pay Mr R £20,000 plus interest.

Mr R accepted this outcome, but HSBC didn't. They asked for an Ombudsman to review the complaint.

In October 2023 I issued a provisional decision in which I said:

"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'm intending to reach a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

HSBC's primary obligation is to follow the payment instructions provided by their customers.

But they also have obligations to be alert to fraud and scams and to act in their customers best interests. So, the first thing I must decide is whether the payments Mr R made towards the scam (either individually or collectively) were so unusual, suspicious or indicative of potential fraud that HSBC ought to have done more before processing them.

Each account is individual and different from the next in the way it operates and so there are no set rules for this, and it involves an assessment of the account. This typically covers a range of factors which include its expected and intended use as well as patterns of spending or activity that might indicate a fraud or scam.

I've reviewed the account statements back to October 2021 to assess this. Mr R's account was a sole trader business account for a property rental business. The account typically maintained a healthy balance of between £8,000 to £10,000 and most months there was fairly consistent activity. With certain regular payments being made that might be expected for a business of that type as well as occasional larger payments such as £5,000 in January 2022. There were also regular incoming payments presumably from Mr R's tenants. And it would appear that when Mr R wanted to pay himself from this account, he'd use the reference 'drawings'. This appears numerous times and is the same reference he used when sending money to his account with W as part of the scam.

I also note that shortly before the scam payments, there was a large credit into the account for almost £300,000. I appreciate this payment (and much of how it left the account) was unrelated to the scam. But it is still part of the context and overall picture. When Mr R instructed two payments, each for £5,000 on 16 November 2022 the account balance was over £300,000.

I appreciate Mr R hadn't (in the previous year) made two payments of those amounts before. But in the context of this particular account and what might reasonably be expected, I can't say this was so unusual that HSBC not intervening at the time was unreasonable.

And by the time we get to 22 November 2022 and the £15,000 payment, in the preceding days there had been other significant outgoing payments which included two payments of £100,000 and another of around £60,000. And in that context, I just don't think the £15,000 payment would have stood out as so unusual or suspicious that HSBC not intervening was unreasonable. The fact that the recipient account would have been a recently set up payee doesn't change my mind on this.

And as I don't think HSBC were unreasonable not to have done more before processing the payments, I don't think they are responsible for the loss on that basis. I also don't think (given the money went to Mr R's own account) that anything HSBC did or didn't do in relation to recovery efforts impacted the loss suffered by Mr R.

Despite my natural sympathy for Mr R being the victim of a scam, it would only be fair for me to direct HSBC to provide redress if I think they are responsible for the outstanding loss. And as I'm not currently persuaded they are, I'm not intending to tell them they need to do more to resolve this complaint."

HSBC responded and said they had nothing further to add. Mr R responded and said he accepted my provisional 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.

As neither party had any further evidence or comments for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons 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 Mr R to accept or reject my decision before 12 December 2023.

Richard Annandale
Ombudsman