

## **The complaint**

Ms E complains that HSBC UK Bank Plc didn't do enough to protect her when she lost money to what she believes was an investment scam.

## **What happened**

Sometime in 2017 Ms E was introduced to an investment by a friend. Ms E decided to purchase shares in the company, that I'll refer to as "E". Ms E made an initial payment of £916.39 on 30 November 2017. Ms E then received payments of £624 and £600 in March 2018 from a company she has shown was associated with "E". Ms E then made two further payments to "E" on 24 April 2018, one for £9,027.70 and the other for £4,526.56.

In 2020 "E" stopped responding to Ms E and she said the website disappeared. It was at this point Ms E believed she had been scammed. Ms E said she was too embarrassed at the time to reach out for help.

In March 2023 Ms E contacted HSBC for help in recovering the money she had lost. HSBC agreed to contact the receiving bank to ask if any funds could be recovered, but it explained as the payments were to an international bank it could only do so on a best endeavours basis and could not guarantee it would reply.

Ms E was unhappy with HSBC's response and referred a complaint to the Financial Ombudsman. Our Investigator considered the complaint but didn't uphold it. She explained that she couldn't reasonably conclude that the investment was a scam, and so she did not think HSBC had acted unfairly by refusing to refund the money lost.

Ms E disagreed and asked for her complaint to be reviewed by an Ombudsman. She provided further evidence of the communication she'd had with "E". She said that "E" never returned her money and ceased operation without any warning given to its customers. She said that this was evidence it was a scam. She also provided evidence of an online review that suggested it was a scam.

The case has therefore been passed to me to decide.

## **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'm not upholding this complaint and for largely the same reasons as our Investigator. I realise this will come as a disappointment to Ms E, but for the reasons I'll go on to explain I don't think HSBC has acted unfairly or unreasonably in the circumstances.

I'm sorry to hear Ms E has lost a considerable sum of money. I appreciate this has had a significant impact on her wellbeing and financial security. And I can understand why she wants to do all she can to recover the money she lost. But I can only direct HSBC to refund

Ms E's losses if it can reasonably be held responsible for them. Overall, I've decided that it can't be. I'll explain why.

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 result in disappointing returns or losses. Some of these investments may have been promoted using sales methods that are arguably unethical and/or misleading. However, whilst customers who lose 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 appreciate Ms E has concerns about the investment she signed up for, and I can understand her shock and concern when "E" stopped communicating with her and the website disappeared. I appreciate there are also a couple of online reviews where other customers have characterised it as a scam.

But there are also features of this case that aren't wholly typical for a scam. For example, the timescales involved don't match the patterns I'd expect to see with a typical scam. Ms E made her first payment to E in November 2017, received returns in March 2018 and then made a further payment in April 2018. It seems she was then in contact with "E" until sometime in 2020. Often in the cases we see, scams will be set up quickly and look to extract as much money from its victims as possible before disappearing. The fact that Ms E received a high return from the firm following an initial investment is also not completely in keeping with what I'd expect to see from a scam. There also doesn't appear to be the usual high-pressure sales tactics that often lead to increased spending, usually over a short period of time.

I've also been unable to find any evidence of any credible warnings from the Financial Conduct Authority (FCA), International Organization of Securities Commission (IOSCO) or any other recognised authority concerning the firm.

So, based on what I've seen, on balance I can't say that this case meets the high legal threshold and burden of proof required for fraud. Rather, this appears to be a case of a high-risk unregulated investment that didn't perform as expected, which sadly resulted in Ms E suffering a loss.

Having concluded that this was likely a case of a bad investment rather than a scam, there is nothing further for me to consider, as HSBC has no obligation to protect its customers from bad bargains or to give them investment advice.

There are occasions when we do think banks should query payments because of suspicious activity that appears unusual or uncharacteristic for the account or customer. If such potential fraud alerts are triggered, it is fair and reasonable for a bank to pause and ask questions of the payer about the transaction – which might unravel a scam and stop it before any loss occurs. But those considerations are predicated on there being evidence of a fraud or scam, which is not the case here. Banks do not have to intervene with legitimate payments, and cannot be held liable for alleged losses, when there is in fact no fraud or scam, or if the payer has regrets or second thoughts after the event.

As I've been unable to conclude that Ms E was victims of a fraud or scam, I'm unable to conclude that HSBC ought to have taken any action before processing her payment instructions.

When Ms E finally reported her loss to HSBC and the fact that she'd potentially been victim of a scam, HSBC contacted the receiving bank to see if any funds remained. As the

receiving bank was an international bank, HSBC was only able to attempt this recovery on a best endeavours basis which it explained to Ms E at the time. Unfortunately, the receiving bank hasn't responded to HSBC. I don't find this surprising and even if it had responded I think it unlikely any funds would remain given the time that has passed since Ms E's payments. But I am satisfied HSBC made reasonable efforts to recover the funds Ms E lost, and I can't say it needed to do anything else.

So, overall, I don't think it would be fair or reasonable to hold HSBC responsible for Ms E's loss in this particular case.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 24 August 2023.

Lisa De Noronha  
**Ombudsman**