

The complaint

Mr S complains that HSBC UK Bank Plc didn't do enough to protect him when he was the victim of a scam.

Mr S is being supported by his daughter but for ease, I'll refer to Mr S throughout this decision.

What happened

Between 19 March 2014 and 1 August 2018 Mr S said he was contacted by someone (who I'll refer to here as Mr A) purporting to have links to the betting industry. Mr S said he'd always been interested in horse racing and was curious about making money. And after speaking with Mr A on numerous occasions, he was persuaded to invest in his new betting business. Mr S said he was told by Mr A there were other investors, and they would each get a 5% share of Mr A's business. Mr S said he didn't expect to receive any returns on the investment until the business was profitable and then later sold.

In total, Mr S said he gave Mr A approximately £150,000 – in cash he'd withdrawn and sent via post to an address in Dublin, and by cheque. Mr S's children found out about the payments in 2018 and reported it to the police. Mr S said the police *'absolutely agreed that [he] had been victim to a very professional, convincing con man'*. But were unable to pursue matters because Mr A was based outside the UK. Mr S also reported the matter to Action Fraud.

Mr S said at no time did HSBC intervene in the withdrawals or cheque payments. He said this was a highly irregular situation and HSBC should've done more to protect him.

Mr S complained to HSBC on 26 August 2022. It said it was unable to investigate withdrawals made between March 2014 and August 2016 as this was more than six years ago.

In relation to the withdrawals made between August 2016 and August 2018 – HSBC said these were *'by this time ... in line with [Mr S's] normal expenditure and nature of transactions'*.

Unhappy with HSBC's response to his complaint, Mr S referred his complaint to the Financial Ombudsman.

HSBC told us it's specialist scam team would investigate the case. Our Investigator provided HSBC with information to assist in its investigation, which was ongoing at the point of our involvement. We haven't received anything further from HSBC in this regard.

One of our Investigators considered Mr S's complaint but didn't uphold it. She explained that the Financial Ombudsman is governed by the DISP rules. These explain we can only look at complaints raised within certain time limits. Our Investigator said:

'Under DISP 2.8.2., the Ombudsman cannot consider a complaint if the complainant

referred it to the Financial Ombudsman Service or the respondent business more than: (a) six years after the event complained of; or if later, (b) three years from the date in which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint. Unless exceptional circumstances apply.

Mr S's complaint concerns transactions made between 19 March 2014 and 1 August 2018. He raised his complaint against HSBC on 26 August 2022.

This means the transactions between 19 March 2014 – 25 August 2016 were complained of more than six years after they were made. Mr S would have become aware there was cause for complaint in August 2018, when the police became involved. However, he did not raise his concerns for another four years.

This means Mr S's complaint, about transactions made between 19 March 2014 and 26 August 2016, was raised outside of the timeframes specified in DISP 2.8.2. As I've not been provided with any evidence to suggest exceptional circumstances should apply, I consider any transactions prior to 26 August 2016 to be outside of our jurisdiction'.

In terms of the transactions made after 26 August 2016 – our Investigator wasn't persuaded there was sufficient evidence to demonstrate Mr S had been the victim of a scam. Nor did she think the transactions would've flagged as suspicious. So, she didn't think HSBC had done anything wrong.

Mr S didn't agree and asked for an Ombudsman to issue a final decision. He accepted that the smaller cash withdrawals he made might not have flagged as a concern for HSBC. But he thought that the numerous cheques – for larger amounts to a bank account outside the UK – should've been questioned by HSBC in line with financial money laundering regulations – irrespective of whether there was evidence he was the victim of a scam.

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 decided not to uphold this complaint and for largely the same reasons as our Investigator. I know this is not the answer Mr S was hoping for and so this will come as a disappointment. I can understand why he'd want to do all he can to recover the money he's lost. But I need to decide whether HSBC can fairly and reasonably be held responsible for Mr S's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether HSBC could've reasonably prevented Mr S's loss.

As our Investigator has explained, transactions made prior to 26 August 2016 are not within the Financial Ombudsman's jurisdiction. Neither party has disputed our position here – and I agree with our Investigator on this point. Therefore, my review is based only on payments made after 26 August 2016.

Banks are required to take reasonable action to protect their customers from financial harm from fraud and scams. So, it's important to establish whether the transactions made by Mr S between August 2016 and August 2018 were made because of a scam.

It might help if I first explain that not every complaint referred to us regarding an alleged 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 – as from what Mr S has told us, is possibly the case here.

However, whilst 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 appreciate Mr S has concerns about the way he was treated by Mr A and the tactics used to entice him to make the payments. And that the matter was reported to the police and Action Fraud. But that, in itself, doesn't prove this was a scam. Mr S has been unable to provide us with any information about the exchanges between him and Mr A. Nor does Mr S have any paperwork about the investment itself to evidence what he says Mr A told him, for example – information on the business he was investing in, what the likely returns were, or how long the investment would run for.

So, based on what I've seen, on balance, I can't reasonably say that this case meets the high legal threshold and burden of proof required for a scam.

Having concluded that Mr S wasn't the victim of a scam, there is nothing further for me to consider, as a bank's obligations to protect its customers applies in situations of them being at risk of fraud or a scam.

As Mr S has rightly pointed out, 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 banker 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. A bank does not have to intervene with authorised 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.

I appreciate that Mr S thinks HSBC didn't do enough to protect him given the frequency of the withdrawals and the number of high value cheques he issued. But, given my finding above, I'm not persuaded there was a fraud or scam to protect Mr S against – and so ultimately HSBC had no obligation to get involved in his choice of spending.

Mr S is adamant that had HSBC intervened in the cheque payments over concerns of money laundering – then the 'scam' would've been uncovered, and his loss prevented. But I don't agree with Mr S here.

Firstly, I'd say there's not been any suggestion Mr S was undertaking illegal activities in respect of money laundering. And so, I can't reasonably conclude that HSBC failed to fulfil its regularity obligations in this regard.

But even if HSBC had carried out any money laundering checks, for the above reasons, I can't say this would've uncovered a scam as I'm not persuaded there was indeed one. It naturally follows that I don't think HSBC is responsible for the loss Mr S claims he

suffered.

Secondly, given Mr S had been making these cheque payments and cash withdrawals two years prior to August 2016 – transactions made from August 2016 to August 2018 would've likely appeared to HSBC as normal account activity. Mr S has made specific reference to the cheque payments he made between October 2014 and August 2017 and how these should've raised a concern with HSBC. But I can see from Mr S's bank statements that around 35 of those cheque payments were made during the period *prior* to 26 August 2016. And so, any similar payments made after that date wouldn't have been seen as unusual and so are unlikely to have been flagged by HSBC as suspicious.

Taking everything into account, I don't think it would be fair or reasonable to hold HSBC responsible for Mr S's loss in this particular case.

My final decision

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 S to accept or reject my decision **before 2 February 2024**.

Anna Jackson
Ombudsman