

The complaint

Mr S complains that HSBC UK Bank Plc refuses to refund the money he lost to a scam.

What happened

Mr S was approached via telephone by someone he deemed to be educated who claimed to represent a company based in Switzerland. He turned down the individual's offer to invest in rare earth metals and explained he had previously traded in share options. The individual came back with what Mr S described as 'an impressive offer' for an investment opportunity. Mr S said he checked the company corporate number and saw it was registered by the Swiss authorities who Mr S understood to be respected for being efficient and rigorous with paperwork administration. He said he also checked online for fraud warnings from the UK regulator at the time and checked for other adverse information. He found no bad reviews involving the company who I'll call 'S'.

The individual Mr S was speaking with shared his work history credentials with him and he says he was very patient and not pressing him too hard at first. Mr S made a small investment and he said the individual was persistent and called and emailed for over three months to gain his trust and build a bond before suggesting a larger investment.

Mr S says he made large wire transfers at home and HSBC called him but all it did was check it was him that was making the payment. But when his largest investment was made, he had to do this in a branch. He said he wasn't questioned about the payment. In total, Mr S sent £89,723.31 from his HSBC current account to the scammers between 27 February 2013 to 11 June 2013. The overseas wire transfer payments in dispute were made as follows:

1. 27 February 2013 - £4,000
2. 8 April 2013 - £5,478
3. 11 June 2013 - £80,245.31

Around July 2013, Mr S first contacted HSBC to raise his concerns about S. He later asked for HSBC to recover his payments and subsequently complained about it not protecting him from financial harm.

HSBC issued its final response declining Mr S' claim. It said that the Contingent Reimbursement Model (CRM) code was implemented on 28 May 2019 and was applicable to payments on or after this date and wasn't applicable to overseas payments.

It said it contacted the beneficiary bank to advise them of Mr S' allegations and noted it also contacted the beneficiary bank in August 2013 and received no response. It said the checks it carries out now are different to what it was required to carry out in 2013 and explained it was for the customer to conduct relevant background checks before sending any money. Unhappy with this response, Mr S referred his complaint to this service.

One of our Investigators explained that the in-branch payment ought to have been considered as unusual and the transaction should have been questioned by the branch.

However, he noted expectations of banks over the years have evolved and he didn't think HSBC would have had cause to suspect that S could be a scam as Mr S had already carried out his due diligence prior to investing. And as there were no credible sources of adverse information about S, he didn't think Mr S would be dissuaded from investing.

On 30 November 2023, I issued a provisional decision not upholding Mr S' complaint. For completeness, I repeat my provisional findings below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the right outcome.

I've reached materially the same conclusions as that of our Investigator. I've explained my reasons below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2009 regulations) and the terms and conditions of the customer's account. That was the case from February 2013 to June 2013, and remains so now, and I have taken this into account when deciding what is fair and reasonable in this case. In addition:

- *Regulated firms like HSBC are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).*
- *Firms also have a longstanding regulatory duty 'to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime' (SYSC 3.2.6R, which has applied since 2001). And over the years, the FSA and its successor the FCA have published a series of papers setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime:*
 - *The 2012 thematic review paper 'Banks' defences against investment fraud – Detecting perpetrators and protecting victims' ("the 2012 paper") sets out such non-exhaustive examples. And I am satisfied that the findings of this thematic review and SYSC 3.2.6R are of relevance to both sending and receiving banks. For example, the 2012 paper considered banks' efforts to counter fraud where both the customer is the fraudster and also where the customer is the victim, in light of the regulatory obligation to counter the risk that regulated firms might be used to further financial crime, including fraud.*
 - *The FSA also explained in the 2012 paper that whilst it focused on investment fraud it was of some relevance to other types of fraud as well. Specifically, it said*

“we have a regulatory remit to tackle investment fraud, which has prompted our particular interest in this area, although the lessons of this report can be applied to banks’ handling of other types of fraud and criminal conduct affecting their customers”.

Further, I note over the years that the FCA has issued various press releases about fines and prosecutions of firms (HSBC included) for alleged failures to exercise due diligence with regard to the requirements of the Money Laundering Regulations 2007.

It seems clear from this that standards of due diligence and good industry practice have existed for a long time – including at the time of the disputed events in our case here. Taking all of these things into account, I consider that at the time of the payments in 2013, HSBC should fairly and reasonably have:

- monitored accounts – and any payments made or received – in order to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;*
- maintained systems to look out for unusual and uncharacteristic transactions, or other indicators that its customers were at risk of fraud (amongst other things), particularly given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer;*
- taken additional steps or made additional checks in some circumstances – irrespective of the payment channel used – before processing a payment; or in some cases, to have declined to make a payment altogether in order to help protect customers from the possibility of financial harm from fraud.*

I am satisfied that Mr S authorised the transactions in dispute. I appreciate he doesn’t agree with the terminology of the phrase ‘authorised’. But I’m satisfied these were authorised payments in accordance with the PSR 2009 and the terms and conditions of Mr S’ account. In other words, I’m satisfied he instructed HSBC to make payments out of his account to a particular destination – although I appreciate he was unaware at the time that these payments were going to scammers. And the starting position is Mr S is liable for those payments. But taking all of the things I’ve mentioned into account, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr S when he made three payments totalling £89,723.31, or whether it should have done more than it did.

Due to the time that has passed, HSBC has been unable to provide me with Mr S’ account statements and has provided limited contact notes from the time. So, I’ve based my conclusions on the evidence I have available to me and what I think is fair and reasonable. In relation to the first payment. Mr S says he made this at home and HSBC called just to check he’d authorised it. I think this check was proportionate to the risks HSBC reasonably identified at the time – which seems likely to have been around authorisation only. I don’t think the payment was unusual enough for HSBC to have suspected that Mr S could be falling victim to a scam. It was a single overseas payment. I don’t find that HSBC needed to do more than simply check whether Mr S authorised the payment.

In relation to the second payment which appears to have gone to a new beneficiary, this was made more than a month after the initial payment. I have seen a note recorded on 8 April 2013 that said Mr S processed a payment to Montenegro but included the incorrect beneficiary name, so he cancelled the payment and confirmed he would redo it online. Given that Mr S had already sent £4,000 overseas via wire transfer, I don’t think HSBC should have reasonably had concerns that Mr S was at risk of financial harm from fraud. The payment was made quite some time after the first payment and didn’t appear to indicate a

pressure to pay quickly. The contact notes at the time suggest that Mr S called HSBC to cancel the payment rather than HSBC calling him to check that it was authorised. But even if HSBC had carried out an authorisation check, I think it would have been proportionate to the risk it may have reasonably identified at the time. I don't think HSBC ought to have probed more about the payment or to have reasonably suspected fraud or a scam and clearly Mr S was aware of the destination of the payment.

In relation to the third payment of £80,245.31, this payment was made in branch and therefore there was an opportunity for HSBC to ask some questions. In any event, given the size and nature of the payment instruction here (overseas payment for an investment opportunity), I think the payment would have appeared unusual and uncharacteristic for most customers. Such that in branch HSBC could have questioned Mr S to an appropriate level designed to disturb or unearth a potential fraud and establish whether or not he was at risk of financial harm. Mr S says HSBC didn't ask him any questions and HSBC hasn't provided any evidence that would suggest it asked any questions about the transaction. I conclude it was a missed opportunity to intervene.

The 2012 paper noted UK consumers lose over £500 million every year to share sales frauds and other scams including, but not limited to, land-banking frauds, unauthorised collective investment schemes and Ponzi schemes. I therefore think HSBC ought to have been reasonably aware of common types of investment scams in 2013. And I am satisfied that a bank acting fairly and reasonably – in line with the due-diligence, anti-money-laundering (etc) standards outlined above – would have been concerned by the size of the payment and that Mr S was making an investment; it would have had enough to assess whether Mr S was reasonably at risk of financial harm.

I've reviewed Mr S' paperwork with S and I can see he was investing in commodities. By his own admission, he wasn't under pressure to pay immediately and the pattern of the payments is indicative of this as there was sufficient time and space between each of them. This suggests to me that Mr S would have had enough time to think about making such a substantial payment by the time of his June 2013 payment (given that his first payment was in February 2013).

I don't think HSBC would have been immediately concerned that Mr S had fallen victim to a scam as it wasn't a type of investment its regulator (at the material time) had identified as a common type of investment fraud.

I also don't think Mr S made his decision to invest such substantial sums lightly. It's clear from his testimony that he carried out his own due diligence checks before parting with his money. This was a very sophisticated scam and I don't think HSBC could have reasonably uncovered it.

With that being said, I think HSBC could have asked probing questions about how Mr S had come about the investment opportunity and what checks he'd carried out himself. I think at the point of this payment, Mr S was confident in his decision to invest this large sum of money. He would have likely explained his broker (S' representative) had introduced the investment to him. He'd likely also have explained that he carried out his due diligence and checked S' company records and saw they were registered abroad. I think he'd have likely explained that he'd been investing with S for some time and that he had investment experience. I don't think any of what Mr S would likely have explained at the time would have given HSBC any concern that he could be falling victim to a scam. By this time and by Mr S' own admission, he was completely bought into the investment and had built a bond with S' representative. There were no credible adverse warnings about S at the material time and so I don't think HSBC would reasonably have had grounds to suspect Mr S was at risk of financial harm. I also don't see anything that would suggest HSBC ought to have been

concerned with the beneficiary the funds were going to. The notes recorded in April 2013 indicate that Mr S knew the country the payments were going to and I've noted payments two and three went to the same place. This doesn't suggest that the scammers misled Mr S about where the funds would be sent. And so I don't think either party would have had any reasonable concerns that Mr S could have been falling victim to a scam at the time.

In other words, I don't think HSBC could have reasonably prevented Mr S' loss.

Recovery

I've seen that HSBC sent requests to the beneficiary banks to try to recover Mr S' payments in August 2013. HSBC probably could have contacted the beneficiary banks sooner as Mr S reported the scam in July 2013. But I don't think this would have made a difference. I say this because the notes recorded at the time indicate that a beneficiary bank responded to HSBC advising all funds had been removed from the account by 12 June 2013 (i.e. prior to Mr S reporting the scam to HSBC).

I therefore don't think HSBC could have recovered any of Mr S' loss.

I appreciate my decision will come as a disappointment to Mr S. And I don't doubt the impact such a substantial loss would have had on him. But I don't find that HSBC were responsible for that loss.

Responses to my provisional decision

HSBC replied confirming it had nothing further to add.

Mr S replied, he said in summary:

- His understanding is that a regulated bank is required to have standard procedures in place that protect its customers.
- His understanding about HSBC after learning he was scammed was that it did not have such standards in place.
- The scammer provided him with his professional profile in order to convince him that he possessed the relevant experience to be a hedge fund manager, which he knew would be the crucial qualification if he was going to trust him to invest and trade with his funds.
- It was clear from the profile that HSBC was his previous long-term employer, ending two years earlier, therefore as part of his due diligence and before he invested any funds, he contacted HSBC to verify if the scammer was employed by it. But HSBC didn't respond and he was left to consider that perhaps HSBC doesn't disclose employee details – which was HSBC's first missed opportunity to intervene.
- There was a gap between his first transfers and the large transfer because his £80,000 was tied up in a five-year savings account, which the scammer knew of and was patiently waiting.
- If HSBC had asked general questions in the branch, he'd have volunteered that the scammer said he was employed by HSBC up until 2011 which HSBC could have checked.
- Usually large payments are rounded up, so his payment should have been unusual to HSBC.
- If HSBC had replied to his request for the scammer's employment history confirmation, he would not have sent any of the payments in dispute.

- The scammer presented as an educated person and would have surely known that he would have checked to verify his work history.
- A journalist provided an example of HSBC having negative involvement in 2012 as he's described.

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 know this will be disappointing for Mr S but I don't uphold Mr S' complaint. I'll explain why.

I explained in my provisional decision (that forms part of this final decision) why I felt HSBC checking the first payment in dispute was authorised was proportionate to any risk it may have identified. I also explained why I didn't think HSBC ought to have reasonably been concerned with the second payment. I finally explained why I don't think any meaningful intervention in relation to the third payment would have made a difference to Mr S' decision to send this payment. My rationale against all three payments are unchanged for the reasons I've already explained.

But I have considered whether I think Mr S saying that he queried the broker's employment with HSBC makes a material difference and I don't think it does. I've not seen any evidence that Mr S got in touch with HSBC prior to sending any of his payments. But even if I accept this is what happened, Mr S says he interacted with HSBC for all three disputed payments. But he says that all HSBC sought to do was confirm the payments were authorised. Mr S hasn't expressed that he questioned HSBC on any of the occasions it intervened, even though he did not receive a response to his contact seeking to confirm his broker's job history. If this information was as important as Mr S describes, I think he'd have taken any of those opportunities to question this with HSBC but I don't see that he did.

In my judgement, this was a very sophisticated scam and I think it would have taken a lot for Mr S to believe in S and the broker's legitimacy. According to Mr S' testimony, he carried out his own checks and was satisfied with what he was being told (in absence of receiving any confirmation from HSBC). I think if he had any concerns about the legitimacy of the investment, I don't think he would have sent any money.

But even if HSBC had used the branch opportunity to ask questions (as I've concluded it reasonably should have) I don't think it would have had concerns if Mr S had disclosed that his broker used to work for HSBC. By the time Mr S made his third payment, he'd already built a relationship with the scammer over several months and must have been happy with the performance of his earlier payments to invest such substantial sums. I appreciate Mr S has said he was waiting for his existing savings to mature, which is why there was a gap between his payments but my point remains. I don't think he'd have invested such substantial sums if he wasn't bought into the scam.

Had Mr S questioned the broker's employment history with HSBC when he was in branch, I don't think HSBC would likely have disclosed any information to him for confidentiality reasons. So I think Mr S would have been in the same position and unable to verify his broker's employment history. He would have had to make an informed decision about whether or not to invest and I think he'd likely have invested. I say this because he did in absence of receiving verification of the broker's employment history.

The pounds and pence involved in the third transaction doesn't alter my view that it was a substantial sum of money and HSBC should have reasonably questioned it. Mr S had

carried out his own due diligence checks prior to investing with S. There was no credible adverse warnings about S at the material time and so I don't think HSBC would reasonably have had grounds to suspect Mr S was at risk of financial harm. Payment three went to the same place as payment two (which was sent several months earlier without any reported concerns from Mr S). I don't think HSBC or Mr S would have had any reasonable concerns that Mr S could have been falling victim to a scam at the time.

In other words, I don't think HSBC could have prevented Mr S' loss. Nor do I think it could have recovered it for the reasons I've already explained.

I want to be very clear that by no means do I blame Mr S for what happened. He was the innocent victim of a scam. The cruel scammers are to blame. But I can't hold HSBC responsible for the losses he suffered if I don't fairly think it could have identified that he was the victim of a scam.

My final decision

My final decision is, despite my natural sympathies for Mr S' loss, 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 12 January 2024.

Dolores Njemanze
Ombudsman